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Sustainable development

Oil slick on Lebanese shores

Report of the Secretary-General

Summary

The present report is submitted pursuant to paragraph 9 of General Assembly resolution 72/209, in which the Assembly requested the Secretary-General to submit to it, at its seventy-third session, a report on the implementation of the resolution under the item entitled "Sustainable development".

The report provides an update on progress made in the implementation of General Assembly resolutions 61/194, 62/188, 63/211, 64/195, 65/147, 66/192, 67/201, 68/206, 69/212, 70/194, 71/218 and 72/209 concerning the environmental disaster caused by the destruction by the Israeli Air Force on 15 July 2006 of the oil storage tanks in the direct vicinity of the Jiyeh electric power plant in Lebanon, which caused an oil slick that covered two thirds of the Lebanese coastline and extended beyond. It complements the information presented in previous reports of the Secretary-General on the subject (A/62/343, A/63/225, A/64/259, A/65/436, A/66/297, A/67/341, A/68/544, A/69/313, A/70/291, A/71/217 and A/72/353).

The report was prepared by the United Nations Development Programme in consultation with the United Nations Environment Programme.

* A/73/150.

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I. Introduction

1. The present report is submitted pursuant to paragraph 9 of General Assembly resolution 72/209, in which the Assembly requested the Secretary-General to submit to it, at its seventy-third session, a report on the implementation of the resolution under the item entitled "Sustainable development".

2. The report provides an update on progress made in the implementation of General Assembly resolutions 61/194, 62/188, 63/211, 64/195, 65/147, 66/192, 67/201, 68/206, 69/212, 70/194, 71/218 and 72/209 concerning the environmental disaster caused by the destruction of the oil storage tanks in the direct vicinity of the Jiyeh electric power plant in Lebanon by the Israeli Air Force on 15 July 2006, which caused an oil slick that covered two thirds of the Lebanese coastline and extended beyond. It complements the information presented in previous reports of the Secretary-General on this subject (A/62/343, A/63/225, A/64/259, A/65/436, A/66/297, A/67/341, A/68/544, A/69/313, A/70/291, A/71/217 and A/72/353).

3. The report was prepared by the United Nations Development Programme (UNDP) in consultation with the United Nations Environment Programme (UNEP), building on the work undertaken by the inter-agency team[1] established for the preparation of previous reports. It provides a summary of the information presented in the above-mentioned reports of the Secretary-General on the subject and updates thereon.

II. A brief overview of recent developments

4. The marine oil spill caused by the destruction of the oil storage tanks at the Jiyeh electric power plant by the Israeli Air Force resulted in the release of about 15,000 tons of fuel oil into the Mediterranean Sea, leading to the contamination of about 150 km of coastline in Lebanon and the Syrian Arab Republic, causing adverse impacts to the environment and to the achievement of sustainable development as referred to by the General Assembly in its resolutions 61/194, 62/188, 63/211, 64/195, 65/147, 66/192, 67/201, 68/206, 69/212, 70/194, 71/218 and 72/209.

5. Several United Nations agencies and other international, regional and national entities, including the International Union for Conservation of Nature, the World Bank and the National Council for Scientific Research of Lebanon, were involved in assessing the implications of the oil spill for human health, biodiversity, fisheries and tourism in Lebanon at the time of and in the immediate aftermath of the spill. A summary of their combined findings was presented to the General Assembly in the above-mentioned previous reports of the Secretary-General.

6. In paragraph 4 of its resolution 72/209, the General Assembly acknowledged the conclusions of the 2017 report of the Secretary-General (A/72/353), which reiterated that studies placed the value of the damage to Lebanon at $856.4 million in 2014, and requested the Secretary-General "to urge United Nations bodies and agencies and other relevant organizations involved in the initial assessment of the relevant environmental damage to undertake, within existing resources, a further study, building on, inter alia, the initial work of the World Bank presented in the report of the Secretary-General submitted to the Assembly at its sixty-second session (A/62/343),

[1] The inter-agency team established in 2006 was composed of representatives of the United Nations Environment Programme (UNEP), the United Nations Development Programme (UNDP), the Food and Agriculture Organization of the United Nations (FAO), the World Health Organization (WHO) and the World Bank. The International Union for Conservation of Nature was also a key partner in this work.

with a view to measuring and quantifying the environmental damage sustained by neighbouring countries".

7. By 2015, the Secretary-General had already noted in his report to the General Assembly (A/70/291) that, nine years after the occurrence of the oil slick, there were no further relevant findings available in relation to the environmental impact sustained by Lebanon and neighbouring countries beyond the assessments that had been previously presented. In addition, UNEP had indicated at that time that the scientific viability of gathering additional insight through further studies on the environmental impact was limited. In April 2016, the Government of the Syrian Arab Republic submitted a package of documentation regarding the impact of the oil slick. After conducting a technical evaluation of those documents, with a view to reassessing the viability of the requested further study, UNEP concluded that the documentation provided did not offer new findings or scientifically significant data that differed so substantially from the data used in the original study as to warrant a change in the original assessment of the physical damage to the environment. Therefore, in the absence of new findings and new scientifically meaningful data, UNEP stated that it would not be able to conduct further environmental studies either to provide an assessment regarding the status of past or current operations or to determine the cost of environmental degradation. Against this background, and 12 years after the occurrence of the oil slick, no further study is viable.

8. In paragraph 5 of its resolution 72/209, the General Assembly reiterated its request that the Government of Israel assume responsibility for prompt and adequate compensation to the Government of Lebanon for the aforementioned damage and to other countries directly affected by the oil slick, such as the Syrian Arab Republic, whose shores have been partially polluted, for the costs of repairing the environmental damage caused by the destruction, including the restoration of the marine environment, in particular in the light of the conclusion contained in the 2017 report of the Secretary-General that there remains grave concern at the lack of implementation of the relevant provisions of the resolutions of the Assembly on the subject vis-à-vis reparations and compensation to the Government and people of Lebanon and the Syrian Arab Republic affected by the oil spill. This echoes and emphasizes previous Assembly requests. To date, however, the Government of Israel has not assumed responsibility for the relevant compensation.

9. In paragraph 6 of the resolution, the General Assembly reiterated its appreciation for the efforts of the Government of Lebanon and those of Member States, regional and international organizations, regional and international financial institutions, non-governmental organizations and the private sector in the initiation of clean-up and rehabilitation operations and encouraged the continued support to the Government of Lebanon in that regard, given that the work was ongoing. In June 2016, the European Union, within the framework of its grant to the Government of Lebanon signed in 2015 for the protection and sustainable development of maritime resources in Lebanon, awarded a contract for the treatment and disposal of the remaining solid wastes from the 2006 oil spill. This contract was successfully completed in 2017.

10. In paragraphs 7 and 8 of the resolution, the General Assembly welcomed the agreement of the Lebanon Recovery Fund to host the Eastern Mediterranean oil spill restoration trust fund, and noted the call of the Secretary-General on Member States, international organizations and the private sector to intensify their support for Lebanon in this matter, in particular for recovery and rehabilitation activities on the Lebanese coast. The Assembly also reiterated its invitation to States and the international donor community to make voluntary financial contributions to that trust fund and requested the Secretary-General to mobilize international technical and financial assistance in order to ensure that the trust fund has sufficient and adequate

resources. To date, no contributions have been made to the trust fund hosted by the Lebanon Recovery Fund.

III. Conclusions

11. I wish to commend the ongoing efforts of the Government of Lebanon to address the impacts of the oil spill. However, grave concern remains over the lack of implementation of the relevant provisions of the resolutions of the General Assembly with regard to compensation by the Government of Israel to the Government and people of Lebanon and other countries affected by the oil spill, including the Syrian Arab Republic. This is particularly important since studies show, as mentioned above, that the value of the damage for Lebanon amounted to $856.4 million in 2014.

12. I regret that, to date, no contributions have been made to the Eastern Mediterranean oil spill restoration trust fund hosted by the Lebanon Recovery Fund. I encourage the international donor community to contribute to the trust fund, in view of its commitment expressed in the past to provide financial and other support to Lebanon. Given the circumstances of the Lebanese oil spill case prevailing at the time of the incident and beyond, I urge Member States, international organizations, international and regional financial institutions, non-governmental organizations and the private sector to intensify their support for Lebanon in this matter, in particular for recovery and rehabilitation activities on the Lebanese coast.

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Item 73 of the provisional agenda*
Right of peoples to self-determination

Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

Note by the Secretariat

The Secretary-General has the honour to transmit to the General Assembly, in accordance with Assembly resolution 72/258 and Human Rights Council resolution 33/4, the report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the rights of peoples to self-determination.

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Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

Summary

The present report provides an overview of the Working Group's findings in connection with Sustainable Development Goal 16 (Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels). Specific targets enumerated under Goal 16 include the promotion of the rule of law at the national and international levels and the assurance of equal access to justice for all. In addition, Goal 16 aims to significantly reduce illicit financial and arms flows, combat all forms of organized crime and ensure responsive, inclusive, participatory and representative decision-making at all levels. It also aims to strengthen relevant national institutions, including through international cooperation, in order to build capacity at all levels, in particular in developing countries, to prevent violence and combat terrorism and crime.

The Working Group's findings provide important insights into the challenges associated with mercenaries, foreign fighters and private military and security companies (PMSCs), which remain serious obstacles to the achievement of Goal 16 and its various targets.

The present report focuses on specific selected targets under Goal 16. Many of the Working Group's findings are based on country visits conducted since the establishment of its mandate. The Working Group hopes that the report will provide a unique insight into the debilitating impact of non-State actors such as mercenaries, foreign fighters and PMSCs on the overall sustainable development agenda. The report is also intended to raise awareness of the need to effectively address these activities and it provides recommendations to assist in advancing progress in the achievement of Goal 16.

I. Introduction

1. The present report is submitted to the General Assembly by the Working Group on the use of mercenaries as a means of violating human rights and the exercise of the right of peoples to self-determination, in accordance with Assembly resolution 72/258 and Human Rights Council resolution 33/4.

2. In pursuance of this mandate, the Working Group monitors mercenaries and mercenary-related activities in all their forms and manifestations, as well as private military and security companies (PMSCs) in different parts of the world. In addition, the Working Group studies their activities and the impact they may have on human rights, in particular the right to self-determination.

3. The vast and complex challenges that arise with regard to accountability in the case of human rights violations committed by mercenaries, foreign fighters and PMSCs have prompted the Working Group to undertake the present analysis, which covers a number of critical issues, including the need for stronger regulations and robust accountability mechanisms to govern the activities of these actors. It is thus essential that States and the various stakeholders engaged in the achievement of the Sustainable Development Goals pay particular attention to the activities of these actors and provide effective measures to address them.

4. The present report highlights trends and cross-cutting issues between Sustainable Development Goal 16 (Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels) and some of the Working Group's findings, which show that mercenaries, foreign fighters and PMSCs present serious obstacles to the realization of this goal.

5. The Working Group provides recommendations for strengthening the implementation of Goal 16. It also hopes that present report will contribute to the various activities relating to the 2030 Agenda, including the review of Goal 16 at the forthcoming High-level Political Forum on Sustainable Development on the theme "Empowering people and ensuring inclusiveness and equality", to be held in 2019.

II. The legal and normative framework: mercenarism, mercenary-related activities and private military and security companies

6. The legal and normative framework related to mercenarism, mercenary-related activities and PMSCs is important for understanding Goal 16, which focuses on access to justice and building effective, accountable and inclusive institutions at all levels in society.

7. Mercenaries, foreign fighters and PMSCs personnel have been documented by the Working Group as perpetrators of a range of human rights and humanitarian law violations. The actions of these actors may give rise to the following human rights and international humanitarian law violations: executions, sexual slavery, rape and other forms of sexual and gender-based violence, torture, mutilation, forcible displacement, enforced disappearance, the wanton destruction of cultural property and the enlistment and forced recruitment of children.[1] Therefore, they can raise serious concerns in relation to Goal 16. International tribunals and national courts have found non-State actors criminally and civically accountable for war crimes.

[1] See A/70/330, para. 91.

8. Mercenaries are subject to two international legal measures. Article 47 of Additional Protocol I to the Geneva Conventions denies combatant and prisoner-of-war status to mercenaries but does not make mercenarism an offence. The International Convention against the Recruitment, Use, Financing and Training of Mercenaries, on the other hand, makes it an offence to recruit, use, train or finance mercenaries. Additional Protocol I has 174 State parties[2] and its provisions on mercenaries are considered to constitute binding customary international humanitarian law in international armed conflict.[3] For the purpose of denying mercenaries the rights of combatant or prisoner-of-war status in an international armed conflict, article 47 of the 1977 Additional Protocol I defines mercenaries in a series of cumulative elements.[4]

9. In addition, some of the terms of this discussion lack legal existence. In the context of armed conflicts, foreign fighters are bound by the applicable provisions of international humanitarian law as long as they participate directly in hostilities. In the absence of either an internationally agreed legal definition of foreign fighters or a specific regime governing them, the Working Group has defined foreign fighters as individuals who leave their country of origin or habitual residence and become involved in violence as part of an insurgency or non-State armed group in an armed conflict. They are motivated by a range of factors, notably ideology, although the Working Group has found financial motivations to be a key factor as well.[5] In this regard, the Working Group deems foreign fighters as a mercenary-related activity.

10. PMSCs are private businesses that provide military and/or security services, irrespective of how they describe themselves. Military and security services include the provision of armed guards and the protection of persons and objects, such as convoys, buildings and other places; the maintenance and operation of weapons systems; prisoner detention; and advice to, or training of, local forces and security personnel.[6]

11. In terms of accountability, it is important to note that, during armed conflicts, mercenaries, foreign fighters and PMSCs are obliged, as are all members of State armed forces or non-State armed groups party to the conflict, to respect the applicable rules of international humanitarian law, in particular the minimum standards enshrined in article 3 common to the four Geneva Conventions of 1949, including the prohibition of murder, torture and the taking of hostages. Customary international humanitarian law requires all parties to a conflict to respect the principle of distinction and proportionality in their military operations and prohibits attacks whose primary purpose is to spread terror. Serious violations of humanitarian law, including acts of terrorism, may amount to war crimes, triggering individual criminal responsibility.

12. In non-international armed conflicts, non-State armed groups, including PMSCs and foreign fighters, do not enjoy combatant immunity and may be prosecuted under

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[2] See https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/vwTreaties1949.xsp.

[3] The International Committee of the Red Cross asserts that article 47 constitutes a rule of customary international law; see https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule108.

[4] United Nations, *Treaty Series*, vol. 1125, No. 17512; article 47 reads: 1. A mercenary shall not have the right to be a combatant or a prisoner of war. 2.A mercenary is any person who: (a) is specially recruited locally or abroad in order to fight in an armed conflict; (b) does, in fact, take a direct part in the hostilities; (c) is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a Party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that Party; (d) is neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict; (e) is not a member of the armed forces of a Party to the conflict; and (f) has not been sent by a State which is not a Party to the conflict on official duty as a member of its armed forces.

[5] See A/70/330.

[6] See https://www.icrc.org/en/document/ihl-and-private-military-security-companies-faq.

domestic law for mere participation in hostilities. The Mercenary Convention furthermore requires State parties to facilitate the prosecution of violations at the national level.[7] If they are operating in situations of armed conflict, the staff of PMSCs must respect international humanitarian law and may be held criminally responsible for any violations they may commit, whether they are hired by States, international organizations or private entities.[8]

13. Both international human rights law and international humanitarian law apply in situations of armed conflict. Treaty mechanisms and international courts, including the International Court of Justice and several regional human rights courts, have deliberated on the interaction between these two bodies of law, noting that both share the common aims of protecting human life and dignity and that both are applicable in situations of emergency.[9]

14. As previously stated, both sets of norms apply to States as main actors of international relations. However, while international humanitarian law applies to all non-State actors, including mercenaries, foreign fighters and PMSCs, this is less true for international human rights law, which is governed by the general rules of international public law and is still rather State-centric. Nonetheless, it is increasingly considered that these non-State actors are also bound by international human rights obligations when they control territory or exercise State-like activities. International tribunals and national courts have found non-State actors criminally and civically accountable for war crimes.

15. This issue has been particularly raised with regard to PMSCs. As small private companies and corporations are becoming ubiquitous instruments of foreign policy, their behaviour and the impacts of their action pose serious risks to human rights. Moreover, the lack of clarity regarding their relationship with foreign States, local interest groups and neighbouring countries make external oversight and liability almost impossible. Consequently, the accountability of these actors for human rights violations before international human rights mechanisms that are based on State accountability only is currently not an option. Therefore, outside of armed conflict, their accountability depends entirely on State institutions that have different levels of acceptance of accountability for each of these actors across the globe.

III. Issues of focus for the Working Group

16. Since its establishment in 2005, the Working Group has carried out extensive research and conducted 22 official visits to various countries and the European Union institutions on issues relating to mercenaries, foreign fighters and PMSCs.[10] Many of these visits were to developing countries that had a history of armed conflict, violence or insurgency. Some visits, which did not have a context of armed conflict or insurgency, were undertaken to better understand the regulatory frameworks that governed these phenomena. Official visits also aimed to assess the human rights implications of these actors, in particular the right to self-determination. The transnational nature of these activities presents an additional layer of complexity to the regulation of these actors.

[7] See General Assembly resolution 44/34, annex, articles 6 and 9–12.

[8] See https://www.icrc.org/en/document/ihl-and-private-military-security-companies-faq.

[9] See United Nations and Office of the United Nations High Commissioner for Human Rights, *International Legal Protection of Human Rights in Armed Conflict* (New York and Geneva, 2011).

[10] See reports on country visits to Afghanistan, Belgium, the Central African Republic, the Comoros, Côte d'Ivoire, Honduras, Iraq, Somalia, South Africa, Tunisia, Ukraine and the United States of America; accessible at: https://www.ohchr.org/EN/Issues/Mercenaries/WGMercenaries/Pages/CountryVisits.aspx.

17. In addressing the aforementioned actors, the Working Group has often analysed the motivational factors that draw these individuals to armed conflicts or to engage in violence, with a particular focus on financial incentives. In the context of various country visits and its study on foreign fighters,[11] the Working Group found that there is no single profile of foreign fighters but that motivational factors are diverse and complex and often best understood in the historical, social, cultural, political and economic contexts in which they exist. Regarding financial incentives or gains, the Working Group found on its visits[12] that some foreign fighters received payments and privileges including free housing, access to swimming pools, occasional gifts or donations and might be supported in bringing their wives and children to live with them. It was also reported that some fighters received an allowance for daily living expenses in the amount of approximately 700 euros a month and that foreign fighters received a higher salary than local Syrian fighters.[13] Much of the information on financial incentives also highlights the larger issue of extreme poverty, whereby fighters are drawn to conflict abroad in order to earn a living or provide for themselves or their families.

18. The recruitment of these actors was also assessed and their human rights impacts were also extensively covered to highlight their dire consequences on human lives and the need to strengthen regulation and accountability measures. All the reports of the Working Group on mercenaries and foreign fighters have included information indicating that these non-State armed actors continue to pose serious threats to the national stability of States and the human rights of local populations.

19. The Working Group also found that the root causes of conflicts involving mercenaries and foreign fighters are often linked to a history of armed conflict or instability; authoritarian rule; poverty or a country's poor or stagnant economic situation; high unemployment; exploitation of natural resources, namely by foreign corporations; or widespread poverty and economic disparities. In addition, the weak and destabilized condition of State institutions has added fuel to conflicts and further attracted these actors to capitalize on the fragile conditions. The result can often be prolonged armed conflict in which serious human rights violations are inflicted on the civilian population.

20. With regard to the right to self-determination, the Working Group found that mercenaries, foreign fighters and PMSCs could significantly impede the right to self-determination, a right that belongs to "peoples" and not States. These actors influence domestic insurgencies in ways that may ultimately undermine the right of self-determination. This, in turn, may complicate mediation and negotiations to end a conflict. Especially in the case of foreign fighters, they often bring in new, radical and unlawful tactics that encourage greater violence towards the civilian population.[14]

21. From 2013 to 2016, the Working Group conducted a global study on national legislation regulating PMSCs, covering about 60 States from all the regions of the world. The study showed that States regulate PMSCs in an incoherent and inconsistent manner, resulting in accountability gaps and serious risks to human rights. The Working Group emphasized that PMSCs engage in activities that often include the use of force, sometimes within armed conflicts and in situations in which participation in hostilities may occur. There are also regulatory gaps in the acquisition of weapons by company personnel and divergent approaches to the use of force and firearms in the course of duty, within both the private military and the private security

[11] See A/70/330.
[12] See A/HRC/33/43/Add.1 and A/HRC/33/43/Add.2.
[13] See A/HRC/33/43/Add.2.
[14] See Jeni Mitchell, "The contradictory effects of ideology on jihadist war fighting: the Bosnian precedent", *Studies in Conflict & Terrorism*, vol. 31 (2008), No. 9.

industries. The absence of human-rights-based vetting mechanisms of PMSC personnel is also a common factor. There is thus a need to effectively regulate this industry, which has prompted the Working Group to call repeatedly for robust national regulation and an international legally binding instrument on PMSCs.

IV. Goal 16: specific targets in relation to the findings of the Working Group

22. In September 2015, the world's leaders agreed to the next generation of development-related goals. On 1 January 2016, the 17 ambitious global objectives known as the Sustainable Development Goals came into effect under resolution 70/1 of the General Assembly, "Transforming our world: the 2030 Agenda for Sustainable Development". As the preamble states, the Agenda is a plan of action that seeks to strengthen universal peace and recognizes certain fundamental goals necessary to attain this. The goals resonate with international human rights standards, are interlinked and cross-cutting and aim to leave no one behind.

23. In deciding on the goals and targets, Member States recognized that each country faces specific challenges to achieve sustainable development and underscored the special challenges faced by the most vulnerable countries, in particular African countries, least developed countries, landlocked developing countries and small island developing States. Countries in situations of conflict also require special attention.

24. Goal 16 was adopted as an acknowledgment by the international community that peace is fundamental to development. It also recognizes that conflict and instability are significant impediments for development. Low income fragile and conflict-affected countries often record lower levels of development. In this context, the Working Group, noting its extensive work on mercenaries, foreign fighters and PMSCs, decided to focus on this goal, which calls for the promotion of peaceful and inclusive societies for sustainable development, the provision of access to justice for all and building effective, accountable and inclusive institutions at all levels. Goal 16 is not only a valuable and important aspiration in its own right, it is also a significant "enabling goal" for the entire 2030 Agenda.[15] In many respects, Goal 16 is the most ambitious goal of the 2030 Agenda and presents unique practical challenges in its implementation and measurement. Of the 12 targets enumerated under Goal 16, the Working Group focused on 7 that were closely related to its findings over the years. In outlining these targets, the Working Group hopes to further underscore how the activities of non-State armed actors and responses by States that fail to comply with their international human rights obligations can seriously hinder progress towards the achievement of Goal 16 and the need for States, in particular, to address these activities effectively.

25. The Working Group has witnessed first-hand how non-State armed actors can destabilize entire countries using violence and committing human rights atrocities, often with impunity. Many of these experiences were observed in developing countries, often at the lowest end of the poverty scale. Poverty and inequality can be a driver of violent conflicts. Often these countries were crippled by long years of armed conflict and political instability. Many are situated in Africa, a continent which holds some of the largest and richest reserves of natural resources worldwide.

[15] See United Nations Development Programme, "UNDP support to the implementation of Sustainable Development Goal 16" (living document; last updated January 2016); accessible at: http://www.undp.org/content/undp/en/home/librarypage/sustainable-development-goals/undp-support-to-the-implementation-of-the-2030-agenda.html.

26. Yet the activities of armed actors, many of which are often foreign elements, have severely inhibited development and progress for these countries. In some situations, only a minority of the population enjoy the benefits of resources that could potentially provide for the country's whole population. The findings of the Working Group's reports over the years not only provide important insight into the need to have strong regulations, enforcement measures and strategies to address the activities of mercenaries, foreign fighters and mercenaries but they also highlight the dire situations in which sustainable development is severely hindered in various countries affected by these non-State actors.

27. The most common focus of the Working Group, inter alia, has been to promote the strengthening of accountability frameworks in relation to non-State armed groups that have committed human rights violations. In its various reports,[16] the Working Group identifies important issues that need to be addressed to achieve sustainable development. These include but are not limited to the need to have an early warning system to stem violence or crises, especially in various countries where these exist; promote strong State institutions with a focus on human rights and the rule of law; ensure strong accountability frameworks to counter impunity for human rights violations and provide effective remedies for victims; tackle root causes that lead to violent extremism; promote peacebuilding and a culture of tolerance and social cohesion; and ensure a participatory approach and inclusion at all levels of society in these endeavours.

28. The Working Group has also repeatedly called for strong multi-stakeholder partnerships — national, regional and international — to address transborder criminal activities related to mercenarism, foreign fighters and PMSCs. States must do more to assist one another in their various regions to cooperate and exchange information and skills in tackling these transnational activities. This collaboration is also important among key United Nations agencies with programmes on the ground related to the 2030 Agenda. More coordination and linkages with United Nations human rights entities and mechanisms, including the universal periodic review and the Special Procedures mechanisms, can go a long way towards achieving the Sustainable Development Goals.

29. In this context, the findings of the Working Group are outlined below in relation to specific targets of Goal 16 targets, followed by recommendations that may assist in furthering progress in the achievement of this important development goal.

A. Target 16.1: Significantly reduce all forms of violence and related death rates everywhere

30. The 2030 Agenda was adopted in a complex and challenging global development context, where new and protracted violent conflicts have remained a major development challenge, leading to over 60 million people being forcibly displaced worldwide at the end of 2014, the highest number since 1945.[17] Violence and violent deaths are not limited to conflict-affected regions; in fact, about 90 per cent of violent deaths in the world occur in non-conflict situations. Violent extremism is increasingly an issue of global, regional and national concern. There has been a rise

[16] See reports on country visits to Afghanistan, Belgium, Central African Republic, the Comoros, Côte d'Ivoire, Honduras, Iraq, Somalia, South Africa, Tunisia, Ukraine and the United States of America; accessible at: https://www.ohchr.org/EN/Issues/Mercenaries/WGMercenaries/Pages/CountryVisits.aspx.

[17] See Office of the United Nations High Commissioner for Human Rights, *World at War: UNHCR Global Trends: Forced Displacement in 2014* (http://www.unhcr.org/556725e69.pdf), which puts the figure at 59.5 million forcibly displaced at the end of 2014.

in the number of powerful, non-State, armed groups possessing multiple agendas antithetical to peace and development and threatening the very existence of States.[18]

31. Varied forms of violence, a complex multidimensional set of drivers and an increasing number of non-State actors using new technologies and social media and with transnational connections are changing the nature of violent conflicts. As various global events have shown, fragility can affect any country or city, not just those traditionally considered fragile or conflict-affected. Locally confined tensions can easily become regionalized, complex and costly.[19] Higher levels of violence greatly affect economic development, which in turn suffers detrimental social impacts. Even in high-income countries, violence severely impacts progress, thus underscoring the universality of Goal 16. For nations affected by armed conflict there is also the conflict trap, whereby the impact of conflict further increases the risk factors associated with the conflict. Low socioeconomic development can support the conditions for violence but can also be a consequence of violence. The two are mutually affective, forming a vicious cycle of degeneration, resulting in a country having less of a possibility for conflict resolution.[20]

32. Since mercenaries, foreign fighters and PMSCs often operate in conflict situations or where violence is a likely occurrence, the necessity of conflict prevention is imperative to facilitate the promotion and achievement of the Sustainable Development Goals targets. Conflict prevention requires support for strong regulation and accountability mechanisms to bring perpetrators to justice. It also includes the development of credible and inclusive national and local capacities for the peaceful settlement of disputes; the strengthening of social cohesion as a deterrence to exclusion and violence, including violent extremism; and the facilitation of consensual approaches to critical development challenges through multi-stakeholder dialogue.[21]

33. In its various visits, the Working Group observed the way by which mercenaries, foreign fighters and PMSCs can significantly destabilize a country by violent means. This can render a State helpless and ineffective, particularly if the violent conflict is prolonged. This in turn has a severe adverse impact on the local populations, in particular marginalized or vulnerable groups, including women, children, persons with disabilities, the elderly, or indigenous communities, to name a few. The destabilizing impact of these actors have hindered the local population from effectively building a peaceful, developed and democratic society.[22]

34. The Working Group has documented the human rights violations instigated by mercenaries, foreign fighters and PMSCs,[23] including summary executions, enforced disappearances and abductions, arbitrary detention, sexual and gender-based violence and slavery, to name a few. The 2013 conflict in the Central African Republic, one of the worst humanitarian crises to date, resulted in thousands of deaths and about 380,000 persons were internally displaced, while 450,000 refugees fled to neighbouring countries.[24] This conflict has continued to the present day, with no sign of a peaceful resolution that could allow the country to rebuild and develop. As such, local populations continue to live in dire situations of poverty, insecurity and violence. Recurrent attacks continue at the hands of armed groups which have taken advantage of the ongoing fragile state of the country and have proliferated throughout

[18] See United Nations Development Programme, op. cit.

[19] See A/HRC/33/43/Add.2.

[20] See Institute of Economics and Peace, "SDG16 progress report: a comprehensive global audit of progress on SDG16 indicators: 2017", accessible at: http://visionofhumanity.org/app/uploads/2017/09/SDG16-Progress-Report-2017.pdf.

[21] Ibid.

[22] See A/HRC/36/47/Add.1.

[23] See A/HRC/24/45/Add.1, A/HRC/24/45/Add.2 and A/HRC/15/25/Add.2.

[24] See A/HRC/36/47/Add.1.

various territories. This is a prime example of how armed groups have gained power and control to the point of rendering a State helpless to provide the needed support and security for its people. The porous borders and movement of foreign fighters and mercenaries also contribute to the ongoing conflict.

35. Sexual and gender based violence have commonly been used as a weapon of warfare by mercenaries and foreign fighters.[25] The Working Group has noted that often women, men and children have all been victims of sexual violence. However, in many conflicts, the women far outnumber the men in sexual violence. In one conflict,[26] around 6,000 women were victims of sexual violence and slavery. During armed conflicts, mercenaries inflicted sexual violence including female genital mutilation, as a weapon of warfare. Gang rapes were often common and committed with impunity, often due to lack of sufficient evidence as victims could not attend court hearings or were fearful to come forward due to the stigma and shame associated with these crimes. Attacks against humanitarian workers have also been common among conflict-ridden countries where mercenaries and foreign fighters operate. This has further worsened the situation of local populations and civilians who heavily rely on such aid for survival.

36. In Comoros, where there was no armed conflict, the Working Group found that after 20 years of repeated coup d'états, most of which were violent and instigated by mercenaries, the country was seriously hindered from developing politically, economically and socially. PMSCs also work alongside mercenaries in creating insecurity as was the case in Honduras, Equatorial Guinea and Somalia. In these countries, PMSCs engaged in killings, forced evictions, torture, sexual violence and acts of threats against local populations including peasants. These armed actors prolonged conflicts and made them more intractable. They also complicate efforts to mediate and negotiate a peaceful resolution. In this context, they pose serious hindrances to the achievement of Goal 16.

37. To address the need to end violence, the Working Group has focused many of its recommendations on the need for effective peacebuilding strategies and initiatives, with the multilateral cooperation and support to do this given the fragile state of affected countries. It often called to strengthen the State institutions, particularly the security sector to ensure stronger protection for the local population, where conflict or violence were often recurrent. The need to also bring perpetrators to justice, including foreign and national armed actors is also a main concern and many of these issues are elaborated under target 16.6 which focuses on accountability. The Working Group has also advocated for the ratification of key instruments including the International Convention on Mercenaries, the Rome Statute of the International Criminal Court and other human rights international legal instruments.

B. Target 16.2: End abuse, exploitation, trafficking and all forms of violence against and torture of children

38. The Working Group found that human rights violations were commonly inflicted against children in situations where mercenaries, PMSCs and foreign fighters operate, particularly in situations involving an armed conflict. The human rights violations committed against children included abductions, torture, detention, sexual slavery and forcible recruitment as child soldiers. During the Central African Republic conflict, for example, some 6,000 to 10,000 children were connected to armed groups, whether forcibly recruited as child soldiers or used for sexual slavery and other purposes. In the same conflict, instances of sexual and gender-based violence against women and girls numbered about 27,000 compared to about 1,800

[25] Ibid.
[26] Ibid.

instances against men and boys. Children were also recruited to be porters, informants and cooks. Their vulnerability during times of crisis was often exploited.[27]

39. In Côte d'Ivoire, many young people, including children, were recruited as combatants during the armed conflicts in 2002 and 2011. Some of them were reported to have become mercenaries subsequently on the basis of their extensive training and involvement in warfare. In what appears to be a vicious cycle of youth violence and a legacy of the post-election crisis, the Working Group was informed of the current phenomenon of gangs of violent young people, including very young children, causing mayhem throughout the country. These gangs have reportedly committed killings, thefts and other illegal activities. Most of these young people live in abject poverty. Child soldiers who are drawn into mercenarism often come from impoverished settings.

40. During the Working Group's visit to Tunisia, it observed that non-State armed groups recruited foreign fighters under the age of 18. Boys as young as 17 were reportedly recruited to fight in the Syrian Arab Republic. Human rights law prohibits the recruitment of children under 18 by State armed forces or non-State armed groups. The Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism and the Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities have reported that young boys and girls under the age of 18 are being targeted to travel abroad to participate in terrorist activities. ISIL is reportedly using significant numbers of minors as fighters (see S/2015/123, para. 40; S/2015/358, paras. 28 and 30; and A/72/865-S/2018/465).

41. In its thematic study on foreign fighters, the Working Group learned of allegations of human trafficking in camps in the Syrian Arab Republic run by foreign fighters, where people were sold or exchanged among parties to the conflict for propaganda or other reasons. Children were also reportedly sold to people in other countries and recruited to fight alongside mercenaries.

42. Since 2014, an estimated 17,000 children have been recruited in South Sudan, some 10,000 in the Central African Republic, some 20,000 in the Democratic Republic of the Congo and several thousand in Yemen. Over the past 10 years, more than 65,000 children have been released from armed forces and armed groups, while tens of thousands of boys and girls under the age of 18 continue to be used in conflicts around the world.[28]

43. Currently, the world holds the largest generation of young people in history, an estimated 1.8 billion worldwide who are between the ages of 10 and 24 years old. If these young people are not given ample opportunities to meaningfully participate in social, political and economic activities and decision-making, they are at risk of being marginalized and alienated. The Working Group has seen a disturbing trend of foreign fighter recruitment focused on these particular youths and children. As determined during one visit, the youngest child known to have travelled to engage in the conflict zone in the Syrian Arab Republic was 13 years old.[29] Many young people who were targeted were from minority ethnicity groups or lower social-economic groups and struggled with poverty, discrimination and marginalization. In Tunisia, the Working Group learned that organized crime syndicates were often forcibly recruiting young people by enticing them with false opportunities to study abroad. These young individuals ended up being trafficked into training camps in Libya with the intention of having them fight for Da'esh in the Syrian Arab Republic. Areas near the border of Tunisia with Libya were known sites of trafficking in people and illicit goods.

[27] Ibid.

[28] See https://www.unicef.org/media/media_94892.html.

[29] See A/HRC/33/43/Add.2.

44. The Working Group has increasingly highlighted the need to strengthen the protection of children and young people in situations where mercenaries, PMSCs and foreign fighters operate. Its most recent report to the Human Rights Council[30] covers the topic of the recruitment of children by non-State armed groups, including mercenaries, PMSCs and foreign fighters, and covers the factors surrounding this phenomenon in detail.

45. The Working Group has emphasized the importance of ensuring that responses to the recruitment and use of children in armed conflict focus on the rehabilitation and reintegration of children. States should address the root causes of child recruitment into armed conflicts and take preventive and not punitive measures. The reintegration of children is also important to ensure long-lasting peace, security and sustainable development in post-conflict societies.

46. The Working Group noted the need for States to have a stronger commitment to protecting children against trafficking, exploitation, torture and other abuses. In the context of armed conflict or violence, States are encouraged to endorse and implement international human rights standards, including the Convention on the Rights of the Child and the Principles and Guidelines on Children Associated with Armed Forces or Armed Groups, to further protect children against unlawful recruitment.

C. Target 16.3: Promote the rule of law at the national and international levels and ensure equal access to justice for all

47. Having clear and precise criminal legislation and an effective criminal justice system is imperative to promoting the rule of law and ensuring equal access to justice for all. While this is an important factor, the Working Group has witnessed the lack of accountability in many of the countries visited, mainly owing to institutions being undermined through conflict, violence or instability. The fight against impunity, including for non-State actors, is part of sustainable development. It requires, however, the existence of effective justice mechanisms, formal or traditional, to deal with disputes, offences and human rights violations.

48. In its various visits, the Working Group noted the severe challenge to access to justice for victims in the lack of judicial infrastructure, lack of qualified members of the judiciary and of judicial independence and the existing threats of reprisals against members of the judiciary, victims and witnesses. Corruption and the lack of training of investigators were also serious problems, as well as the lack of appropriate, clear and precise legislation.[31]

49. This target is broader than ensuring an effective legal system. It also ensures that local populations that have been adversely impacted by armed conflict or violence have trust and confidence in the system that they have recourse to. The system itself needs to be easily accessible to vulnerable groups, including women and children. It needs to be able to address mass human rights abuses and provide the necessary protection. In order to do so, it should also ensure that complementary support measures are set up, as appropriate, including medical assistance, free legal assistance and psychosocial care.

50. The Working Group observed that the need to ensure robust protection for witnesses and victims who wished to participate in judicial proceedings against perpetrators of human rights violations was a critical issue. Mercenaries and foreign fighters often needed to be repatriated back to the country of origin and this required

[30] See A/HRC/39/49.

[31] See A/HRC/36/47/Add.1.

the effective cooperation of that State. It was a challenge to ensure that such individuals were not granted immunity upon their return.

51. The Working Group noted that Governments need to establish non-judicial transitional justice mechanisms in the form of consultations and awareness campaigns on the objectives and functions of such mechanisms. Documentation and records of human rights violations are necessary for record-keeping. This will assist efforts to secure and preserve documents related to human rights and international humanitarian law violations, which can be used for the prosecution of perpetrators and for mapping the way forward in policies relating to truth, justice and reparation.

52. Documenting human rights violations and collecting historical information are also imperative for ensuring that data and information is available for the investigation and prosecuting of perpetrators. In the Comoros, for example, the Working Group noted the absence of records and written documents on previous violations by mercenaries. The lack of judicial investigations and absence of comprehensive historical and political research made it a challenge to bring justice to victims. The Working Group is of the view that it is difficult for it at this stage to establish the facts with certainty and determine the degree of foreign countries' responsibility for mercenarism in Comoros. However, it recognized that the collective actions of foreign actors and local nationals were responsible for the continued destabilization of Comorian society and that they effectively impeded the right of the local people to self-determination. This highlights the need for the stronger civil society to observe, document and safeguard the violations occurring in their countries.

53. The 2030 Agenda depends heavily on available data for the measurement of progress and development. It is therefore important, as part of building strong institutions for justice and development, that the collection of data and systematic documentation of information be carried out concerning the local population, its human rights and development or lack of development.

54. It is also important to provide the necessary infrastructure and training to train public servants, civil society and non-government actors on human rights especially in remote and rural areas where poor communities are likely to be situated. Strong access to education and information is also important in building communities that understand and adhere to the rule of law. When affected by activities of mercenaries, PMSCs and foreign fighters, it is much easier to trace and obtain information if these systems are effectively in place. If the rule of law is clear and precise, supported by effective justice system, then there is a stronger likelihood of addressing the activities of these actors.

D. Target 16.4: By 2030, significantly reduce illicit financial and arms flows, strengthen recovery and return of stolen assets and combat all forms of organized crime

55. Having geographically delimited borders is a foreign concept in many countries where foreign fighters and mercenaries operate. In addition, the transborder activities of PMSCs illustrate the reality that most of these actors operate within porous borders, which have allowed for the free movement of individuals as well as illicit weapons and arms that have perpetuated conflicts and violence in certain countries. The difficulty in having effective control over these frontiers were challenges for various States.

56. An example was seen in the visit to Côte d'Ivoire, where citizens of neighbouring countries such as Liberia have traditionally moved freely in and out of the country, in part because relatives live side by side on both sides of the border. Despite increased

attempts to strengthen border control and management, the authorities continue to face challenges in curbing cross-border criminal activities, including mercenarism.

57. In the Central African Republic, the fragile state of the country presented opportunities for criminal activities to flourish, which attracted foreign fighters to exploit the situation. Armed foreigners continued to enter the territory to conduct illegal operations, including trafficking of arms and weapons from countries and as far as Libya. This was a major concern and challenge to the peacebuilding and disarmament efforts being carried out by the government and its partners. The proliferation of armed groups and their potential to exert power and control over various territories in the country continued to attract mercenaries and foreign fighters to the country, seriously hindering national stability and efforts to move the country forward. The flow of armed actors and weapons could also destabilize a whole region and impact the development of more than one country.

58. During its visit to Afghanistan,[32] the Working Group commended the efforts made by the Government to adopt a comprehensive regulation concerning the licensing of PMSCs. This was also an attempt to control, at least partially, the flow of weapons, in coordination with the disarmament and demobilization programme that was already in place. The Working Group notes the importance of keeping a registry that documents the flow of illicit arms.

59. With regard to the illicit flow of finances, the Working Group notes that this is a major factor that fuels the activities of mercenaries, foreign fighters and even PMSCs. Illicit finances are key to perpetuating the activities of these actors and the collaboration between States, regions and even institutions, including the World Bank, is important to broaden the network of actors that could help to stem this activity. States who are also indirectly or directly financing the activities of mercenaries, foreign fighters and PMSCs to destabilize another country also need to be held responsible. The Working Group's studies on foreign fighters have also shown that financial flows often come in the form of what looks legitimate, such as the financing of a non-governmental organization, but with the funds intended to support radicalization or violent extremism movements that enable foreign fighter movements into countries such as Iraq and the Syrian Arab Republic. The Working Group stresses the importance of addressing these activities, not only to cease the financing of armed actors but also the myriad of transborder organized criminal activities that could undermine sustainable development.

E. Target 16.6: Develop effective, accountable and transparent institutions at all levels

60. Peacebuilding efforts are crucial to stabilize countries that have been ravaged by conflict. Even in non-armed conflict situations where violence and insecurity are rampant owing to the proliferation of armed actors, the existence of effective, accountable and transparent institutions can facilitate development and progress. Throughout the Working Group's visits to countries where mercenaries, PMSCs and foreign fighters have committed criminal offences and human rights violations, the most common challenge was the pervasive impunity that accompanied these activities. Even with the existing legal framework covering these actors, there were rarely prosecutions or convictions related to the violations perpetrated by mercenaries, PMSCs and foreign fighters.

61. Weak justice systems embedded within weak State institutions meant that the impunity of perpetrators persisted and the public had little or no confidence in these

[32] See A/HRC/15/25/Add.2.

mechanisms. In some visits,[33] the Working Group was informed that mercenaries had been recruited by both sides to the conflicts and had been responsible for grave violations, including mass killing, rape, torture, enforced disappearance and abduction. However, there were none or very few convictions for these violations.

62. The Working Group has also found that mercenaries and foreign fighters often contribute to the adoption of more radical methods of warfare, encouraging the targeting of civilians or fostering sectarian violence. With limited connections to the local population, foreign fighters may be more brutal, as has been seen repeatedly in the Syrian Arab Republic and Iraq. The acts of foreign fighters may amount to gross human rights violations,[34] war crimes and crimes against humanity or genocide. Ensuring the accountability of foreign fighters involved in such abuses and crimes is critical. Whenever possible, the States of nationality or permanent residency should effectively investigate and prosecute foreign fighters involved in such acts.[35]

63. All actors who participate directly in hostilities in disregard of relevant provisions of international humanitarian law are accountable for their actions under this set of norms and international criminal law, regardless of their status. However, to the extent that mercenaries and foreign fighters use force outside the control of the sovereign State, in particular outside the relatively robust mechanisms for human rights protection in national military forces, they may be more likely both to violate human rights and avoid accountability for doing so.

64. While both mercenaries and foreign fighters may commit and have indeed committed human rights violations, in the case of mercenaries and private military contractors employers can be put under pressure to prevent such behaviour. Market pressures against human rights violations have been repeatedly applied as useful non-legal tools for controlling the private use of force.[36] In the case of PMSCs, international mechanisms such as the Montreux Document on pertinent international legal obligations and good practices for States related to operations of private military and security companies process and the International Code of Conduct for Private Security Service Providers' Association seek to apply additional measures that will promote lawful behaviour.

65. Unfortunately, market pressures and additional legal mechanisms are not as effective in regulating the behaviour of foreign fighters. This is especially the case with respect to Da'esh, a group that has used gross violations of human rights as a propaganda tool, releasing videos of the most horrific violence. The market and reputational costs of human rights abuses do not apply in such cases. In its study on foreign fighters, the Working Group concluded that countries of nationality of foreign fighters should effectively investigate and prosecute those responsible for such violations, whenever possible.[37] There have been few reported investigations into such acts committed by foreign fighters, with the large majority of reported investigations and prosecutions focusing on domestic terrorism offences. More information is needed to analyse the reasons for this lack of investigations, such as the difficulty of obtaining evidence, as well as the possible impact of Security Council resolution 2178 (2014) with its focus on terrorist acts.

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[33] See A/HRC/27/50/Add.1, A/HRC/43/Add.3 and A/HRC/36/47/Add.1.

[34] See http://uniraq.org/images/humanrights/HRO_PoCReport%2011Sept-10Dec_FINAL_ENG_16Feb2015.pdf.

[35] See A/70/330, para. 46.

[36] See Deborah Avant, "The emerging market for private military services and problems of regulation", in *From Mercenaries to Market: The Rise and Regulation of Private Military Companies*, ed. Simon Chesterman and Chia Lehnardt (Oxford University Press, 2007), chap. 10.

[37] See A/HRC/28/28, para. 44.

66. The Working Group, in its global study of national regulations of PMSCs, observes that regulatory gaps in legislation, including as regards penal and civil sanctions for violations committed by PMSCs, and the lack of monitoring bodies and accountability mechanisms entail a threat to several human rights, including the right of victims to an effective remedy. The study reiterates its call for an international legally binding instrument to ensure consistent regulation worldwide and adequate protection of the human rights of all persons affected by the activities of PMSCs.

67. In a series of recommendations to promote accountability, the Working Group notes the importance of ensuring that anyone accused of mercenary-related activity be tried by an independent court or tribunal and that investigation and prosecution and judicial proceedings need to be carried out against persons responsible for serious violations. Gender-based violence, which has often been used as a tool of warfare, needs to be tackled in a multisectoral approach involving civil society and community actors to ensure that victims step forward and are given the appropriate support. Having a victim-centred approach to development and to transitional justices can assist in prevention measures. Ratifying the Rome Statute is also one of the steps that can help in assuring greater accountability. Complaints mechanisms need to be easily accessible to all parts of society, including the most marginalized, vulnerable and neglected members of societies. In addition, the establishment of popular proceedings such as truth and reconciliations mechanism can bring just satisfaction to the victims and provide sustainable peace.

68. The Working Group found that, whether a situation concerned mercenaries, PMSCs or foreign fighters, in peacetime or in conflict, the need for effective and just accountability mechanisms is fundamental to peacebuilding and sustainable development. Without accountability, there will be very little progress on advancing the 2030 Agenda. In fact, the Working Group believes that States could effectively reduce their vulnerability to attacks by mercenaries, PMSCs and foreign fighters by establishing strong accountability mechanisms that ensure effective remedies to victims.

F. Target 16.7: Ensure responsive, inclusive, participatory and representative decision-making at all levels

69. In most countries where mercenaries, PMSCs or foreign fighter activities have resulted in serious violations, there is a stark absence of inclusive and participatory elements in society. In such contexts, the Working Group has found that individuals are more prone to be recruited to fight with groups such as Da'esh. Radicalization and violent extremist propaganda can specifically target the excluded and marginalized and be successful in this process because an individual does not feel a strong kinship or sense of belonging in the community.[38] Furthermore, if these individuals are in situations of poverty, they are more prone to be enticed by financial gains to join mercenary and foreign fighter activities and PMSC operations that may be operating in an illegal environment.

70. In several of its reports, the Working Group highlighted the particular victimization of women and children in situations of conflict and violence. It noted the need to provide support to national efforts to tackle sexual and gender-based violence by, for example, increasing women's political participation and leadership in sectors such as justice and security and economic recovery, and by providing services for survivors and tackling impunity in these cases.

[38] See A/HRC/33/43/Add.1 and A/HRC/33/43/Add.2.

71. The Working Group finds it crucial to support the establishment of measures to ensure response, inclusive, participatory and representative decision-making at all levels. This requires processes that will improve citizen participation, political development and civic engagement,[39] all of which are part of the human-rights-based approach to development. Promoting resilient State-society relations by addressing both sides of the relationship in both crisis and non-crisis settings will also effectively facilitate the 2030 Agenda. This could include supporting constitutional reform processes and providing advice to national partners on substantive constitutional issues, such as power-sharing, human rights, gender equality and public accountability. Strengthening the role of civil society and protecting spaces for people's participation in political and public life, with a special focus on groups experiencing significant marginalization, are also imperative. The advancement of women's equal participation and decision-making in political processes and institutions, with a special focus on supporting legal, policy and programmatic frameworks and approaches,[40] must also accompany these efforts.

72. The Working Group also commends efforts to develop and strengthen engagement or collaboration with international human rights machinery, such as the universal periodic review, the treaty bodies and the Special Procedures of the Human Rights Council. This will help strengthen national human rights institutions, ombudsperson institutions, equality and gender bodies and other independent oversight institutions in developing their capacity and enhancing their role as the cornerstone of national human rights systems, which enables better understanding of the situation of excluded and marginalized groups and individuals in a country.

G. Target 16.a: Strengthen relevant national institutions, including through international cooperation, for building capacity at all levels, in particular in developing countries, to prevent violence and combat terrorism and crime

73. As elaborated in the above-mentioned targets, strong State institutions, robust accountability mechanisms and strong engagement and participation of all sectors of society are conducive to the positive achievement of the Sustainable Development Goals. However, strong cooperation — national, regional and international — is fundamental for equipping countries to prevent violence, terrorism and crime. This is particularly so where the transborder aspect of these activities requires strong cooperation to successfully combat such threats.

74. In the spirit of the 2030 Agenda, the Working Group emphasizes the importance of this multisectoral cooperation. States need to promote and strengthen democracy, economic, social and cultural rights and good governance in order to effect development. They also need strong human rights institutions, both nationally and internationally, that work together to promote and strengthen the capacity to achieve peace and development.

75. The Working Group notes that most of the States in which it has witnessed the most debilitating impact of mercenaries, foreign fighters or PMSCs were those in dire need of assistance, both financially and through technical assistance from the international community. Regional collaboration was also crucial for bringing perpetrators to justice and combatting impunity. The Working Group often called on States in which conflict by mercenaries, foreign fighters or PMSCs was present to work together to mutually exchange information, skills and services that could assist

[39] See United Nations Development Programme, op. cit.
[40] Ibid.

in prosecuting perpetrators. In this framework, investigations could be strengthened and the exchange of evidence and critical information could strengthen protection for local populations and promote peace within the region. This approach could serve as an important early warning system as well.

76. Support given to States also needs to extend to civil society and to civic, religious and political leadership in order to develop and apply national "infrastructures for peace" or credible and inclusive policies, institutions and mechanisms for the promotion of dialogue and the building of consensus around contested issues to help prevent or de-escalate conflict. The Working Group reiterates that capacity-building that can lead to strong national institutions requires the active participation of women and youth, as well as marginalized groups, in national and local peace initiatives. This includes efforts to prevent violence, manage conflicts constructively and develop effective responses during political transitions and periods of rapid change.[41] These initiatives can also assist in addressing the global challenge of violent extremism by sharing best practices among countries and entities and continuing to promote inclusive and participatory development and a culture of tolerance.

77. The Working Group reiterates that the fight against mercenarism and its related activities urgently requires cooperation that goes beyond the borders of concerned States. It requires strong political will and cooperation among the global community, much as is the case for implementation of the 2030 Agenda and the call to "leave no one behind". While a State can do its best to eliminate the scourges of these activities in its own territory, the omission of the support of neighbouring States and the global community can mean that its best efforts may still be futile in achieving peace and development for its people.

V. Conclusions and recommendations

78. **The Working Group's mandate has given it unique insight into the impact of non-State armed actors such as mercenaries, foreign fighters and PMSCs on human rights, in particular the right of peoples to self-determination. Since human rights are crucial and conducive to achieving sustainable development, the findings of the Working Group could add value to understanding how these activities adversely impact and significantly hinder sustainable development. The achievement of Goal 16 could have a positive impact on the implementation of the 2030 Agenda because it is seen as an enabling goal for the accomplishment of all the other Sustainable Development Goals. The Working Group hopes that, by reviewing some of its findings in the framework of Goal 16, the present report and recommendations will assist in promoting actions and initiatives that could pave the way for the realization of Goal 16 and thereby all the other Sustainable Development Goals. The recommendations of the Working Group, many of which are based on its own findings in its work and research over the years in countries that have been adversely affected or challenged by mercenaries, foreign fighters or PMSC operations, are set out below.**

A. General recommendations

79. **The following are the general recommendations of the Working Group:**

(a) **Promote and strengthen democracy and good governance, economic, social and cultural rights and development;**

[41] Ibid.

(b) Develop and strengthen engagement or collaboration with international human rights machinery, such as the universal periodic review, the treaty bodies and the Special Procedures of the Human Rights Council,

(c) Ratify or accede to the 1989 International Convention against the Recruitment, Use, Financing and Training of Mercenaries and introduce national-level legislation against mercenarism by adopting specific provisions in national criminal codes or separate legislation on mercenaries;

(d) Ensure that anyone accused of involvement in a mercenary-related activity is held accountable by a competent, independent and impartial court or tribunal, in compliance with international human rights standards;

(e) Address the problem of impunity in order to support genuine reconciliation and peace efforts by carrying out investigations, prosecutions and judicial proceedings against persons responsible for serious violations or abuses of international human rights law or international humanitarian law, including torture or other cruel, inhumane degrading treatment or punishment, summary or arbitrary executions or enforced or involuntary disappearances;

(f) Support national efforts to tackle sexual and gender-based violence, for example by increasing women's political participation and leadership in sectors such as justice and security and economic recovery, by providing services for survivors, tackling impunity in cases of sexual and gender-based violence and engaging people at the community level in awareness-raising and prevention activities;

(g) Develop and strengthen the capacity of justice and human rights institutions and enhance service delivery and protection, especially of vulnerable groups, in order to nurture public trust and confidence;

(h) Strengthen the protection of members of the judiciary and the justice system and of witnesses and victims in order to effectively combat impunity;

(i) Ensure adequate remedies, including the provision of compensation for victims and their families, and set up or strengthen remedy and reparation mechanisms;

(j) Increase efforts and strengthen initiatives for non-judicial transitional justice mechanisms through consultations and awareness campaigns regarding the objectives and functions of such mechanisms;

(k) Increase efforts to secure and preserve documents and records related to human rights and humanitarian law violations, which can be used to prosecute perpetrators and map the way forward for policies relating to truth, justice and reparations;

(l) Emphasize a victim-centred approach to the development of transitional justice processes, including with regard to the national prosecution of crimes falling under the Rome Statute, inclusive truth-seeking processes and long-term development measures for prevention and non-recurrence;

(m) Establish independent, public and easily accessible complaints mechanisms to allow local populations to report human rights violations involving mercenaries and mercenary-related activities;

(n) Ensure free political participation, improve citizen participation and ensure accountability through electoral processes, parliamentary and political development, constitutional processes and civic engagement, including women's political participation;

(o) **Support parliaments in the better discharge of their constitutional law-making, oversight and representation mandates, as well as in increasing the capacities of civil society actors to act as intermediaries in political advocacy, and support the advancement of women's equal participation and decision-making in political processes and institutions, with a special focus on supporting legal, policy and programmatic frameworks and approaches;**

(p) **Strengthen the capacities of civil society actors and expand and protect spaces for people's participation in political and public life, with a special focus on groups experiencing significant marginalization, including persons with disabilities and indigenous peoples;**

(q) **Ensure responses to the phenomenon of the recruitment and use of children in armed conflict that focus on the separation, rehabilitation and reintegration of children. States should address root causes that foster child recruitment into armed conflicts and should take preventive, not punitive, measures aimed at protecting children from being recruited into armed conflict;**

(r) **Reintegrate children who have been associated with armed groups, which is crucial to ensure long-lasting peace, security and sustainable development in post-conflict societies. Failure to reintegrate this group of children socially and economically into society may increase the risk of re-recruitment of these individuals and cause substantial economic development issues in the community and society at large;**

(s) **Restore core government functions in order to deliver equitable public services and inclusive development at the central and local levels;**

(t) **Develop and strengthen partnership between Governments and civil society actors;**

(u) **Address the consequences of corruption and ensure that public resources go to the most vulnerable by helping countries to develop pro-poor policies, supporting participatory planning, monitoring and decision-making and mainstreaming anti-corruption measures throughout the planning and budgeting cycles;**

(v) **Strengthen peacebuilding and development trajectories, which strengthens the effectiveness of justice assistance provided by the United Nations system;**

(w) **Strengthen cooperation among countries in order to facilitate investigations and prosecution, including through legal assistance and extradition agreements, thereby expediting the exchange of evidence and information in order to obtain the information necessary to prosecute and secure convictions;**

(x) **Strengthen development cooperation among territories to enhance local capacity for development and develop and strengthen core government functions, in particular in post-conflict and fragile contexts on a priority basis, in order to meet long-term State-building, institutional capacity and national development objectives. This will help Governments in fragile settings to gain control of the recovery process, deliver essential services and support peacebuilding processes;**

(y) **Adopt regulations to control arms flows and combat all forms of organized crimes in order to curb the proliferation of small arms and light weapons.**

B. Recommendations related to private military and security companies

80. **The following are the recommendations of the Working Group related to PMSCs:**

(a) Enact domestic regulatory legislation requiring the registration and licensing of PMSCs, oversight and accountability, including provisions for effective monitoring and reporting of human rights violations and remedies for victims, in order to ensure that the services imported by these private companies neither impede the enjoyment of human rights nor violate human rights in recipient countries;

(b) Ensure consistent regulation worldwide and adequate protection of the human rights of all persons affected by the activities of private military and security companies by adopting an international legally binding instrument, which would provide a standard regulatory framework and a single dedicated body to address issues related to the activities of private military and security companies, including accountability and the availability of effective remedies for victims;

(c) Ensure a vigorous vetting process for awarding contracts to private military and security companies that involves assessment of past performance, including assessment of steps taken to provide victims with remedies and compensation for past abuse and the banning, suspension or conviction of employees involved in human rights abuses;

(d) Ensure that the registration and licensing of PMSCs and individuals working for them includes the definition of minimum requirements for obligatory transparency and accountability of companies, background screening and vetting of PMSC personnel;

(e) Ensure adequate training of PMSC personnel on international human rights and international humanitarian law, as well as rules of engagement consistent with applicable law and international standards, and establish effective complaint and monitoring systems, including parliamentary oversight. Such regulatory systems should include thresholds of permissible activities and States should impose a specific ban prohibiting PMSCs from intervening in internal or international armed conflicts or actions aimed at destabilizing constitutional regimes;

(f) Consider and implement regulations on the rules and methods of acquiring, exporting, importing, possessing and using weapons and ensure that private military and security company personnel worldwide are also held accountable for the illegal acquisition of weapons and illicit trafficking in arms;

(g) Continue and strengthen efforts to ensure that priority is given to capacity-building activities, including training for national police forces on human rights standards, international humanitarian law and United Nations standards on the use of force, in order to ensure that all citizens enjoy security;

(h) Consider membership in the Montreux Document process and the International Code of Conduct for Private Security Service Providers' Association in order to promote good practices in the contracting of PMSCs.

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Review of the efficiency of the administrative and financial functioning of the United Nations

Activities of the Independent Audit Advisory Committee for the period from 1 August 2017 to 31 July 2018

Report of the Independent Audit Advisory Committee

Summary

The present report covers the period from 1 August 2017 to 31 July 2018. During the period, the Independent Audit Advisory Committee held four sessions, which were presided over by Maria Gracia Pulido Tan (Philippines) as Chair and Patricia Arriagada Villouta (Chile) as Vice-Chair. As has been the case during the history of the Committee, all members attended all of the sessions during their appointments.

Section II of the report contains an overview of the activities of the Committee, the status of its recommendations, and its plans for 2019. Section III sets out the detailed comments of the Committee.

* A/73/150.

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I. Introduction

1. The General Assembly, by its resolution 60/248, established the Independent Audit Advisory Committee as a subsidiary body to serve in an expert advisory capacity and to assist it in fulfilling its oversight responsibilities. By its resolution 61/275, the Assembly approved the terms of reference for the Committee, as well as the criteria for its membership, as contained in the annex to that resolution. In accordance with its terms of reference, the Committee is authorized to hold up to 4 sessions per year. To date, the Committee has held 43 sessions since its inception in January 2008.

2. In accordance with its terms of reference, the Committee submits an annual report containing a summary of its activities and related advice to the General Assembly. The present eleventh annual report covers the period from 1 August 2017 to 31 July 2018.

3. The Committee is also required to advise the General Assembly on the compliance of management with audit and other oversight recommendations; the overall effectiveness of the risk management procedures and deficiencies in the internal control systems; the operational implications of the issues and trends highlighted in the financial statements and the reports of the Board of Auditors; and the appropriateness of the accounting and disclosure practices in the Organization. The Committee also advises the Assembly on the steps necessary to facilitate cooperation among the oversight bodies.

4. The present report addresses the issues identified during the reporting period as they pertain to the above-mentioned responsibilities of the Committee.

II. Activities of the Independent Audit Advisory Committee

A. Overview of the sessions of the Committee

5. During the reporting period, the Committee held four sessions: from 12 to 15 December 2017 (fortieth session), from 21 to 23 February 2018 (forty-first session), from 25 to 27 April 2018 (forty-second session) and from 18 to 20 July 2018 (forty-third session). Three of the sessions were held at United Nations Headquarters. The forty-first session was held at the United Nations Office at Nairobi.

6. The Committee functions under its adopted rules of procedure, as contained in the annex to its first annual report (A/63/328). To date, all members of the Committee have a 100 per cent attendance rate at its sessions. All the decisions of the Committee have been unanimous; however, its rules of procedure make provision for members to record their dissent with respect to decisions taken by the majority.

7. During the fortieth session, in December 2017, the members re-elected Maria Gracia Pulido Tan (Philippines) as Chair, and elected Patricia Arriagada Villouta (Chile) as Vice-Chair for 2018. The Committee also hosted a second meeting of the Chairs and Vice-Chairs of the United Nations system oversight committees to discuss best practices, lessons learned and other issues of importance to the United Nations oversight community. Additional information about the Committee can be found on its website (www.un.org/ga/iaac) in all the official languages of the United Nations.

8. During the reporting period, the Committee issued two reports: the Committee's annual report to the General Assembly for the period from 1 August 2016 to 31 July 2017 (A/72/295) and a report to the Assembly, through the Advisory Committee on Administrative and Budgetary Questions, on the proposed budget of the Office of

Internal Oversight Services (OIOS) under the support account for peacekeeping operations for the period from 1 July 2018 to 30 June 2019 (A/72/766).

B. Status of the recommendations of the Committee

9. The Committee meets four times per year, typically for three days at each session. During the reporting period, several issues, particularly in relation to enterprise risk management and the operations of OIOS, were addressed. The Committee followed up on the implementation of its recommendations as a standard agenda item at each session. Some of the significant recommendations made by the Committee during the reporting period relate to:

(a) The need for management to continue to make efforts to ensure the timely implementation of the oversight bodies' recommendations;

(b) The need for senior managers to actively lead enterprise risk management efforts and ensure that departments and offices have the capacity and resources to effectively implement and sustain enterprise risk management;

(c) The need for OIOS to embed fully enterprise risk management into the Office;

(d) The need for the Organization to assess and manage fully all aspects of the risks associated with extrabudgetary funding;

(e) The need for OIOS to expedite the quality review process for the Inspection and Evaluation Division and the Investigation Division, and for all its divisions and the Office as a whole to complete client satisfaction surveys;

(f) The need for OIOS to establish specific outcome-oriented goals and indicators that demonstrate the outcome of the Office's efforts. These performance metrics should include leveraging data visualizations to analyse trends over time, depict progress against targets, identify where actions are required, and determine the details on actions to be taken;

(g) The need for OIOS to continue to address its vacancy issue and pursue alternative recruitment and retention strategies;

(h) The need for management to put in place an audit module in Umoja that takes into account the needs of OIOS, and for the Organization to develop consistently the capacity to manage Umoja and use its outputs to make decisions.

C. Overview of the plans of the Committee for 2019

10. The Committee undertook its responsibilities, as set out in its terms of reference, in accordance with the scheduling of the sessions of the Advisory Committee on Administrative and Budgetary Questions and the General Assembly. The Committee will continue to schedule its sessions and activities to ensure coordinated interaction with intergovernmental bodies and the timely availability of its reports. In a preliminary review of its workplan, the Committee identified several key areas that will be the main focus for each of its four sessions for fiscal year 2019 (see the table below).

Workplan of the Committee from 1 August 2018 to 31 July 2019

Session	*Key focus area*	*Intergovernmental consideration of the report of the Committee*
Forty-fourth	Review of the 2019 workplan of OIOS in the light of the workplans of other oversight bodies	Advisory Committee on Administrative and Budgetary Questions, first quarter 2019
	Proposed budget of OIOS under the support account for peacekeeping operations for the period from 1 July 2019 to 30 June 2020	General Assembly, second part of the resumed seventy-third session
	Operational implications of issues and trends in the financial statements and reports of the Board of Auditors	
	Coordination and cooperation among oversight bodies, including hosting a coordination meeting of oversight committees	
	Election of the Chair and Vice-Chair for 2019	
Forty-fifth	Status of implementation of oversight bodies' recommendations	General Assembly, second part of the resumed seventy-third session
	Report of the Committee on the OIOS support account budget	
	Review of the enterprise risk management and internal control framework in the Organization	
Forty-sixth	Operational implications of issues and trends in the financial statements and reports of the Board of Auditors	Advisory Committee on Administrative and Budgetary Questions, second quarter 2019
	Proposed programme budget for OIOS for the year ended 31 December 2020	General Assembly, main part of the seventy-fourth session
	Coordination and cooperation among oversight bodies	
	Transformational projects and other emerging issues	
Forty-seventh	Preparation of the annual report of the Committee	General Assembly, main part of the seventy-fourth session
	Review of the enterprise risk management and internal control framework in the Organization	

Session	*Key focus area*	*Intergovernmental consideration of the report of the Committee*
	Status of implementation of oversight bodies' recommendations	
	Coordination and cooperation among oversight bodies	

11. In planning its work, the Committee is mindful of the following relevant events that could have an impact on its work activities:

(a) The various reform/transformational initiatives on which the Organization has embarked, such as the management reform, including the delegation of authority, the shift in the management culture from process to results, and Umoja;

(b) The end of the terms of office of three of the five members of the Committee, whose three-year terms expire in December 2019.

III. Detailed comments of the Committee

A. Status of the recommendations of United Nations oversight bodies

12. Under paragraph 2 (b) of its terms of reference, the Committee is mandated to advise the General Assembly on measures to ensure the compliance of management with audit and other oversight recommendations. The Committee maintains that if the weaknesses identified by the oversight bodies are fully implemented in a timely manner, the chances for the Organization to achieve its objectives are greatly improved. During the reporting period, the Committee reviewed the status of implementation by management of the recommendations of United Nations oversight bodies, as a standard practice.

Board of Auditors

13. With respect to the financial report and audited financial statements for the year ended 31 December 2017 (A/73/5 (Vol. I)) (non-peacekeeping financial statements), the Board of Auditors reported that as at 31 December 2017, of the 129 outstanding recommendations up to the year ended 31 December 2016, 31 (24 per cent) had been fully implemented, 84 (65 per cent) were under implementation, 12 (9 per cent) had not been implemented and 2 (2 per cent) had been overtaken by events.

14. The Board noted that the rate of implementation had increased from 18 per cent in 2016 to 24 per cent in 2017 and that steps had been taken to implement nearly 65 per cent of the outstanding recommendations. The Board urged the Administration to build on the momentum and ensure the implementation of the recommendations within a defined time frame.

15. With respect to the financial report and audited financial statements for the 12-month period from 1 July 2016 to 30 June 2017 (A/72/5 (Vol. II)) (peacekeeping financial statements), the Board of Auditors noted that the rate of implementation of recommendations for the 12-month period from 1 July 2015 to 30 June 2016 stood at 42 per cent, a decrease from the 49 per cent reported for the previous year. The Board acknowledged, however, that recommendations often required actions to ensure compliance, and could in some cases require a longer time to implement. The Board also noted that, of the 198 recommendations it had made over the previous four years, 151 (76 per cent) had been fully implemented, and urged the Administration to ensure

that all outstanding recommendations were implemented in a prompt and timely manner in accordance with General Assembly resolution 69/249.

16. **The Committee urges Management to continue making efforts to ensure timely implementation of the Board's recommendations.**

Office of Internal Oversight Services

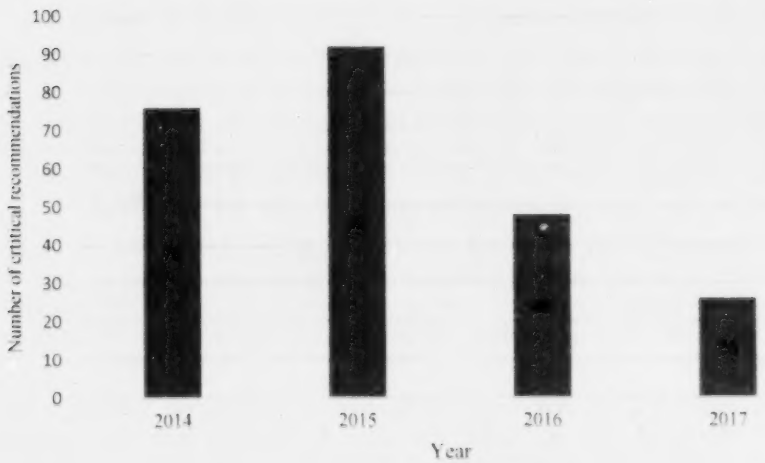
17. All recommendations categorized as "critical" by OIOS are brought to the attention of the Management Committee for follow-up action, and special focus is placed on recommendations whose implementation is past due. The Committee receives quarterly updates from OIOS and the Department of Management on the status of implementation of critical recommendations.

18. According to OIOS, the total number of outstanding critical recommendations decreased from 44 at the end of the fourth quarter of 2016 to 35 as at the end of the first quarter of 2018. Of the 35 outstanding critical recommendations, 17 were past due. The largest share of OIOS past due critical recommendations continues to be in the Office of the United Nations High Commissioner for Refugees and peacekeeping and special political missions.

19. **The Committee urges Management to continue its efforts to implement the past due critical recommendations in a timely manner.**

20. The Committee was informed that over the past two years, the overall number of critical recommendations had continued to fall, as shown in figure I. The Committee asked Management and OIOS to explain the decline.

Figure I
Trend analysis of critical recommendations of the Office of Internal Oversight Services



21. Management said that the declining number of recommendations was attributable to OIOS not finding many critical deficiencies in its assignments because of the strengthening of internal controls and the fact that managers were becoming more aware of their fiduciary responsibilities.

22. OIOS said that the downward trend was the result of two main factors. First, in mid-2016 OIOS had introduced an escalation standard operating procedure, whereby unaccepted critical recommendations were required to be escalated to the Secretary-General. As a result, OIOS had enhanced its review process to ensure that only the

most critical recommendations were escalated to the Secretary-General. Second, several audits conducted in 2014 and 2015, including audits of air operations, waste management, safety and security, and peacekeeping start-up missions (the United Nations Multidimensional Integrated Stabilization Mission in Mali and the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic), had resulted in a number of critical recommendations. Those audits had been instrumental in strengthening procedures and controls over high-risk areas; accordingly, it was to be expected that the number of critical findings contained in subsequent reports related to the same audit subjects would fall.

23. **The Committee welcomes the comments of both management and OIOS alluding to improvements in internal controls as one of the possible reasons for the reduction in the number of critical recommendations. The Committee emphasizes the need to sustain such efforts. In the same vein, the Committee recalls the Joint Inspection Unit's observation that improved internal controls would enable OIOS to expand its focus to a more strategic outlook, a matter that will be discussed later in the report, in the context of the effectiveness of OIOS.**

24. OIOS further informed the Committee that it had formed a working group to analyse the Internal Audit Division's recommendation rating methodology using, as a benchmark, the best practices of the internal audit offices of other United Nations agencies, as well as similar organizations, and the expectations of all stakeholders. According to OIOS, at the end of the exercise, the working group would make proposals on the recommendation rating methodology and the escalation process.

25. **In paragraph 30 of its report on its activities for the period from 1 August 2015 to 31 July 2016 (A/71/295), the Committee recommended that OIOS review its rating methodology. Although that recommendation pertained to the ranking of reports in general, the Committee is nevertheless pleased to note that OIOS has decided to create a working group to address the rating system.**

Implementation of the recommendations of the Investigation Division

26. In his report on shifting the management paradigm in the United Nations (A/72/492), the Secretary-General noted that, as part of the reform initiatives, the investigation function would be strengthened. Ensuring that recommendations are implemented in a timely manner is part of that strengthening. In its discussions with OIOS, the Committee was informed that the percentage of recommendations implemented by the target date was 68 per cent for the first quarter of 2018.

27. The Committee was concerned about that implementation rate and asked management for an explanation. Management informed the Committee that the Organization had endeavoured to put in place an effective system to follow up on the implementation of recommendations while protecting the confidentiality of the information.

28. In its report on the investigations function in the United Nations system (A/67/140), paragraph 63, the Joint Inspection Unit noted that there was no centralized authority tasked with monitoring and following up on investigation reports to see if action had been taken and, if so, whether the action had been proportional. The Unit believed that was a major lacuna that should be corrected, as it could lead to cases not being acted upon, intentionally or not, and result in the unequal treatment of staff who committed similar offences but did not receive similar sanctions. The Unit recommended that the executive heads designate a focal point to monitor the implementation and follow-through of all investigation reports within their organizations.

29. The views of the Joint Inspection Unit were echoed by some managers, who indicated that while the Investigation Division's work was of high quality, thorough and helpful, there was a lack of accountability following such investigations. Some managers believed that for OIOS to be an instrument of positive change, there was a need to ensure that there was accountability once the reports were submitted to Headquarters. In other words, not only must justice be done, but it must also be seen to be done.

30. Upon inquiry, management informed the Committee that issues regarding the follow-up of the results of OIOS investigation reports had largely been resolved with the issuance of the revised administrative instruction on unsatisfactory conduct, investigations and the disciplinary process in October 2017 (ST/AI/2017/1). According to the administrative instruction, all OIOS investigation reports should be submitted to the Assistant Secretary-General for Human Resources Management, as well as to the Under-Secretary-General for Legal Affairs if the investigation report recommends possible referral to national authorities.

31. Management added that the Assistant Secretary-General for Human Resources Management and the Under-Secretary-General for Legal Affairs would, if necessary and in their respective areas of responsibility, escalate the cases to the Under-Secretary-General for Management or the Secretary-General and ensure that action was taken. According to management, that had not been the case in the past; previously, OIOS reports had been sent to the heads of departments and offices, who decided what action should be taken.

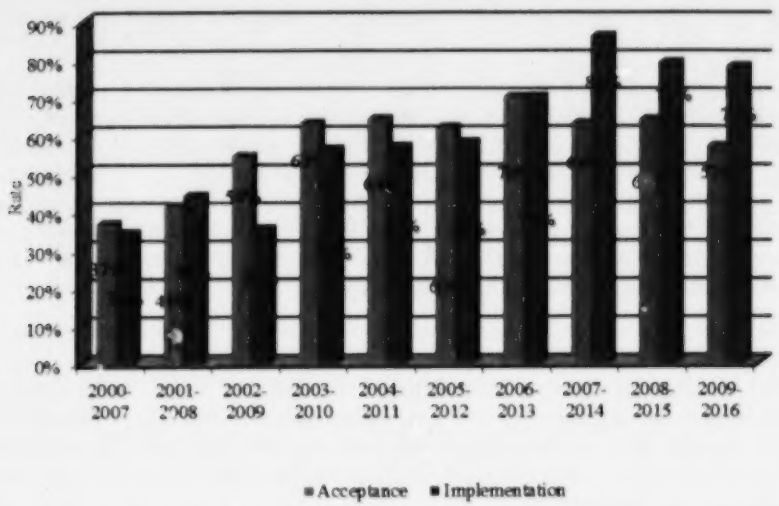
32. **In view of the above, and within the context of a shifting management paradigm, the Committee welcomes the new effort to address the lacunae in the follow-up mechanism of investigation reports. At the same time, the Committee recommends that management ensure that the recommendations of the Investigation Division are implemented in a timely manner to foster accountability.**

Joint Inspection Unit

33. In its report for 2017 and programme of work for 2018 (A/72/34), the Joint Inspection Unit noted that the average rate of acceptance of recommendations made between 2009 and 2016 in single organization reports and notes was higher (82 per cent) than that of recommendations in system-wide and several organizations reports (68 per cent). However, the Unit also noted that, during the same period, the implementation rate of recommendations in single organization reports and notes was lower (79 per cent) than that of system-wide reports (85 per cent). According to the Unit, that was partly because in the 15 reviews of management and administration performed in single organizations between 2009 and 2016, three had significantly low rates of implementation.

34. For the United Nations Secretariat, the average acceptance rate decreased to 57 per cent for the period 2009–2016, compared to 64 per cent for the 2008–2015 period. The implementation rate also decreased slightly to 78 per cent for the 2009–2016 period, compared to 79 per cent for the previous period (see figure II). The Committee noted that the trend had peaked during the 2007–2014 period and had been declining ever since. The Committee sought management's views on the matter and in response, management reiterated its previous position that the decrease was attributable to the fact that many of the Joint Inspection Unit's recommendations were addressed to both the governing bodies and the United Nations System Chief Executives Board for Coordination, over which the Secretariat has no control.

Figure II
Status of acceptance/implementation of recommendations of the Joint Inspection Unit



35. **The Committee notes the importance and value of the Joint Inspection Unit's recommendations for the Organization. The Committee is concerned, however, that while the acceptance rate peaked during the 2006–2013 period and the implementation rate peaked during the following period, they have been on a downward trend since. The Committee urges management to implement the recommendations of the Joint Inspection Unit in a timely manner.**

B. Risk management and internal control framework

36. Paragraphs 2 (f) and (g) of the terms of reference of the Committee mandate the Committee to advise the General Assembly on the quality and overall effectiveness of risk management procedures and on deficiencies in the internal control framework of the United Nations.

Enterprise risk management

37. The Committee has long believed that enterprise risk management is an integral and important management tool of the Organization and has emphasized that top management is needed to continue to actively lead enterprise risk management efforts to ensure that identifying and managing risks become standard ways of doing business across the Organization. The Committee fully agrees with General Assembly resolution 69/272, in particular paragraphs 7 and 8, and the observations of the Advisory Committee on Administrative and Budgetary Questions,[1] the Board of Auditors and the Joint Inspection Unit regarding the importance of embedding enterprise risk management in the day-to-day work of departments.

38. While progress has been made in that regard, during its interactions with offices away from Headquarters, the Committee was informed that enterprise risk

[1] See A/69/802, para. 8.

management was still mainly a Headquarters-driven exercise that had not yet translated into a practical tool that could help those offices to assess risk. Additionally, the offices believed that there was a need to carry out a fresh risk assessment and to weigh the benefits versus the costs of controls to mitigate risk.

39. During the meeting of the Chairs and Vice-Chairs of the United Nations system oversight committees, held in December 2017, it was agreed that it was important for entities to have a mature culture of prudent risk-taking, as opposed to risk avoidance, and a well thought-out and clearly communicated risk appetite consistent with the Secretary-General's initiative of shifting the management paradigm. Participants also noted that risk management was evolving into a more holistic and strategic perspective in organizations.

40. **For enterprise risk management to be an important management tool, the Committee believes that it should not only be Headquarters-centric, but also properly expanded to all offices. The Committee also agrees with the sentiments of some managers that the Organization needs a mature culture of prudent risk appetite.**

41. With respect to enterprise risk management and the three lines of defence model, management informed the Committee that the newly approved Department of Management Strategy, Policy and Compliance would be responsible for developing and maintaining the policy framework and the methodology for enterprise risk management. The new Department would support the distribution of best practices and guidance concerning risk and internal control management principles and develop the appropriate communications and training programmes to enhance the Secretariat's risk management culture. Furthermore, the Committee was informed that it would be the responsibility of managers at all levels to conduct risk assessment exercises in their respective areas, and through risk assessments, to identify and manage the specific risks that affect them. The new Department would prepare a consolidated entity-level risk register for the Secretariat and update the status of implementation of the actions taken to mitigate risk by departments, offices and missions, for distribution to the Management Committee and the Secretary-General and, on behalf of the Secretary-General, to the Committee and the General Assembly, as required.

42. **Taking the above into account, the Committee welcomes the Organization's adoption of the three lines of defence model as part of the integrated assurance process. The Committee will continue to follow up on this as a priority.**

Assessing the organizational culture in the Secretariat

43. In his reports on shifting the management paradigm in the United Nations (A/72/492 and A/72/492/Add.2), the Secretary-General said that the United Nations must move to a culture that was focused more on results than on processes, better managed administrative and mandate delivery risks, valued innovation, and demonstrated a higher tolerance for honest mistakes and a greater readiness to take prompt corrective action. He noted that the Secretariat had conducted several assessments to better understand the current culture.[2]

44. During the meeting of the Chairs and Vice-Chairs of the United Nations system oversight committees, participants emphasized that audit committees could play an important role by ensuring that the institutional tone and culture featured in their discussions on oversight matters. They agreed that common ways to gauge culture included staff surveys, visiting offices and staff, and soliciting inputs from internal and external auditors. They also noted that both audit committees and internal audit

[2] See A/72/492/Add.2, para. 12.

could provide valuable insights into organizational culture and emphasized the importance of collaboration between the two.

45. The Committee has initiated discussions with management and the oversight bodies on that subject. In the meantime, the Committee shares the view of the National Association of Corporate Directors Blue Ribbon Commission that organizations must consider culture as an asset similar to an organization's human, physical, intellectual, technological and other assets.[3] According to the Commission, a healthy culture serves as a unifying force for the organization and reinforces the elements of the strategy and business model in a productive way. Conversely, a dysfunctional culture has the potential to undermine the business model and create significant risk for an organization.

46. **The Committee notes that the Secretary-General has embarked on a process of addressing management culture. Noting the importance of the tone at the top, the Committee recommends that the Organization take advantage of the reform to undertake a holistic review of the culture of the Organization. The Committee believes that the Organization should systematically identify the positive culture that should define the Organization, and implement it both in word and action. The Committee also calls upon OIOS to come up with a clear methodology, taking into account best practices, for periodically assessing the culture of the Organization.**

Information and communication technology strategy, infrastructure and security

47. In its previous report (A/72/295), paragraph 43, the Committee recognized the potential scale and impact of the threat to cybersecurity and digitalization. In the same report, the Committee noted that it had been informed of the implementation of a 10 point action plan to strengthen information security.

48. The Committee followed up on the plan and was informed that it had transitioned to maintenance mode. A longer-term strategic road map for information security built on the 10-point action plan had been developed. The five objectives of the road map are:

(a) To provide a set of pragmatic activities built on the information and communications technology strategy framework;

(b) To broaden the scope of the initiatives of the 10-point action plan;

(c) To transform the initiatives into programmatic activities;

(d) To expand the objective beyond addressing common deficiencies within the Secretariat's information and communications technology environment to providing guidance on and solutions for specific risk areas, such as the handling of sensitive information, and operational requirements;

(e) To institute accountability for recognizing the central role of the Chief Information Technology Officer and ensuring compliance within the delegation of authority framework.

49. During the first meeting of the Chairs and Vice-Chairs of the United Nations system oversight committees, held in November 2016, participants agreed that oversight committees had an important role to play in encouraging and assisting management to look forward at how technological advances and other changes in the

[3] National Association of Corporate Directors Blue Ribbon Commission, *"Culture as a corporate asset"* (2017).

business or wider environment might affect an organization's risk exposure and in identifying potential strategies for dealing with them.

50. At the second meeting, in December 2017, participants again discussed the issue of cybersecurity and digitalization and were briefed by a number of cybersecurity experts on recent trends, including the need for organizations to move from reactive measures to proactive protection, such as isolating sensitive and legacy applications, ensuring data exchanges occur only through clearly defined interfaces and introducing technical solutions such as next-generation firewalls. Participants were also informed of the need for cybersecurity risk management to be part of an organization's wider enterprise risk management and business continuity framework.

51. Cybersecurity awareness was another topic of concern for the Committee. The Committee believes that lack of awareness could lead to compromises of information and communications technology systems, confidentiality and integrity of information. Upon inquiry, management informed the Committee that the issue of awareness had been receiving a lot of attention and that a mandatory training programme was in place. In its second annual progress report on the implementation of the information and communications technology strategy (A/73/160), paragraph 72, the Board of Auditors reported that as at 31 December 2017, 17,906 (47 per cent) out of 38,105 staff working across the Secretariat, and 35,611 external personnel, had completed the mandatory information security awareness training course.

52. **The Committee recognizes the potential scale and impact of the threat to cybersecurity and digitalization and welcomes the efforts of management to address those challenges, including through mandatory training. The Committee recalls management's view that cybersecurity is only as strong as its weakest link. On that note, the Committee recommends that management make a concerted effort to achieve a 100 per cent completion rate for mandatory training. The Committee is aware that will require concerted and coordinated efforts among all stakeholders because the issues are cross-cutting. The Committee plans to follow up on the matter by not only assessing the extent to which cybersecurity risks are being reflected in the Organization's enterprise risk management strategy but also the extent to which management is making decisions to mitigate the most important cyber-risks.**

C. Effectiveness, efficiency and impact of the audit activities and other functions of the Office of Internal Oversight Services

53. Under its terms of reference, the Committee has the responsibility to advise the General Assembly on aspects of internal oversight (resolution 61/275, annex, paras. 2 (c)–(e)). In undertaking to fulfil its mandate, the Committee has maintained its standard practice of meeting with the Under-Secretary-General for Internal Oversight Services and other senior OIOS officials during its sessions. The discussions have been focused on OIOS workplan and budget execution, with significant findings reported by OIOS, operational constraints (if any), post incumbency, the status of implementation by management of OIOS recommendations, including critical recommendations, and strengthening investigations.

54. During the current period, the Committee continued to focus its assessment on two broad areas: (a) strategic planning, OIOS effectiveness and performance measurement; and (b) strengthening the investigation function.

Strategic planning, OIOS effectiveness and performance measurement

Evolving role of the internal audit function

55. According to the standards of the Institute of Internal Auditors, internal auditors have an obligation to assist the organizations they serve in improving the quality of governance, risk management and internal control processes.[4] In its report on the state of the internal audit function in the United Nations system (A/72/120), the Joint Inspection Unit noted that when the second line of defence (management oversight activities) is strong and well developed, it may enable the internal audit function to, inter alia, expand audit services into more strategic areas, including performance auditing, and extend the coverage of activities and operations over which internal audit can provide effective oversight. According to the Joint Inspection Unit, one of the benefits of performance audits is that they can identify redundancies, unnecessary controls and processes and thereby increase efficiency and value for money.

56. During the reporting period, the Committee met with various senior officials to get their views on how OIOS audits and other oversight functions have assisted them in the oversight of their respective departments or entities. The general response was that, while they had a good relationship with OIOS, some managers would like to see more performance audits than compliance audits. They would also like to see OIOS make recommendations that would improve their operations — recommendations that were strategic in nature as opposed to the narrow recommendations they currently received. Furthermore, managers were of the view that it would be useful if OIOS did more benchmarking of good practices and deep dives into the processes that needed to be reviewed and amended.

57. The Committee discussed the findings with OIOS and was informed that the Internal Audit Division already included aspects of performance auditing (measuring efficiency and effectiveness) in many of the audits it carried out. OIOS mentioned that further efforts might be needed to bring performance-related audit results to the attention of their clients and further develop clients' awareness. OIOS confirmed that the Internal Audit Division did not have baseline data on the number of audits that included efficiency and effectiveness issues (performance audit elements), but it was in the process of reviewing that. During its deliberations, the Committee was provided with a list of audits that OIOS considered to be performance audits, including on procurement, facilities management and pension funds. According to OIOS, 40 per cent of recommendations made in 2017/18 related to effectiveness and efficiency issues. OIOS added that all evaluations conducted by the Inspection and Evaluation Division were performance audits since they covered the aspects relating to economy, efficiency and effectiveness. OIOS further noted that a senior evaluator from the Inspection and Evaluation Division would be joining the Internal Audit Division for a short period, which would be an opportunity for the Internal Audit Division to further develop its tools, such as survey questions for conducting performance audits.

58. Subsequently the Committee was also informed that in a client satisfaction survey conducted the previous year, 91 per cent of respondents had expressed satisfaction with the audit reports of OIOS.

59. **The Committee believes that for OIOS to establish itself as a trusted advisor, it needs to understand and appreciate the concerns of its clients. There seems to be a divergence of expectations between some managers and OIOS on what constitutes a performance audit. The Committee believes that arriving at a mutual understanding on performance audits and striking a balance between compliance and performance audits would be consistent with the Joint**

[4] See Institute of Internal Auditors Standard 2110 — Governance; Standard 2120 — Risk management; and Standard 2130 — Control.

Inspection Unit's finding that stakeholders deem performance and compliance audits to be the most important types of audit services.[5]

60. **In addition to developing a baseline and establishing performance indicators, the Committee recommends that, to shift the focus of its work, OIOS must clearly identify the steps it plans to take to improve its capability to conduct performance audits. Such steps should include identifying its plans for future performance audits, the applicable audit standards and what training its staff would need to improve their capability to conduct such audits, as well as a communication plan to effectively inform its clients of the shift.**

61. The Committee was also informed that some managers are concerned that auditors do not understand or are not familiar with the subject matter that they are auditing. During the interaction with OIOS, the Committee was informed that, if there was a lack of knowledge in a particular area, a consultant was usually hired. For example, if there was an audit on climate change, they would hire a consultant who specialized in climate change.

62. **The Committee agrees with OIOS that auditors are not expected to be experts in every field of their clients' business, hence the utilization of consultants to address the specialized or technical aspects of such businesses.**

Role of OIOS in the context of the 2030 Agenda for Sustainable Development

63. In its previous report, the Committee looked at the progress OIOS was making in embodying the integrated, universal and indivisible nature of the 2030 Agenda through its own operations.[6] As a follow-up, OIOS informed the Committee that in its three-year work planning process the Internal Audit Division was focusing on emerging risks related to the Sustainable Development Goals, including gender mainstreaming and gender parity issues. The Division had conducted audits assessing the extent to which United Nations entities — including the United Nations Conference on Trade and Development, the Economic Commission for Latin America and the Caribbean, the Economic and Social Commission for Asia and the Pacific and the secretariat of the United Nations Framework Convention on Climate Change — were mainstreaming the Goals into their programmes. OIOS said that in 2018 the Division would continue with that approach in all applicable audits. The Division had also scheduled specific audits related to the mainstreaming of the Goals into the programmes of work of the Department of Economic and Social Affairs, the Economic Commission for Africa, the Economic and Social Commission for Western Asia and the Economic Commission for Europe.

64. With respect to the Inspection and Evaluation Division, the Committee was informed that the Division was conducting thematic evaluations of policy coherence and the preparedness of the entire Secretariat to implement the Sustainable Development Goals as part of the 2018–2019 work plan.

65. **The Committee welcomes the steps OIOS is taking with respect to the 2030 Agenda and will continue to follow up with OIOS on this matter.**

[5] See A/72/120, para. 96.

[6] See A/72/295, paras. 64–66.

Strengthening the investigation function

Vacant posts in the Investigation Division

66. The Committee has consistently expressed concern about the high number of vacancies in OIOS. Since 2008, the General Assembly has requested that the Office make every effort to fill those vacancies as a matter of priority.

67. The Committee considers this to be a major risk, hence why it is a standing item on its agenda. At its forty-third session, the Committee was informed that overall, the vacancy rate for OIOS continues to show a downward trend, from 13.4 per cent in October 2017 to 10.5 per cent as at 30 June 2018. For the Investigation Division, the vacancy rate decreased dramatically, from 21.2 per cent to 11.5 per cent.

68. **The Committee commends OIOS in general and the Investigation Division in particular for succeeding in reducing the vacancy rate, which initially appeared to be a daunting task. The challenge now is to sustain that progress. The Committee will continue to monitor the issue.**

69. With respect to staff retention, OIOS highlighted several obstacles faced by the Division, including the lack of a good mobility plan owing to the small size of the Division; the nature of the work (investigators in peacekeeping missions often deal with very difficult situations); the lack of job security, as some of the posts are temporary; and the fact that the Division, as the largest investigation unit in the United Nations system, is always seen as an entry point for individuals seeking to join the United Nations investigation system. As such, it is a rich recruiting ground for other United Nations investigation units seeking well-trained and experienced investigators. According to OIOS, a temporary post has been created in order for an in-depth review of staff retention in the Division to be conducted, with a view to analysing the underlying causes and coming up with specific recommendations to address those problems.

70. **The Committee acknowledges the challenges that the Investigation Division faces in retaining staff and believes that identifying the cause of the low retention rate is an integral part of the solution. The Committee will continue to follow up and report on any progress made in future reports.**

Investigation of cases of retaliation

71. Ensuring that staff feel safe reporting wrongdoing and protecting them against retaliation when they do so is an important part of any accountability framework. During the reporting period, the Committee met with the Ethics Office, which indicated that since the issuance of the revised whistle-blower policy in November 2017 (ST/SGB/2017/2/Rev.1), the number of queries and requests for advice had doubled.

72. The Committee inquired about the working arrangement between the Ethics Office and OIOS, and the Director of the Ethics Office emphasized that cooperation between the two offices was increasing, as evidenced by the participation of the Ethics Office in an OIOS induction training course for new investigators in April 2018 at the Regional Service Centre in Entebbe, Uganda. However, the Ethics Office did note that it took OIOS too long to complete investigations pertaining to retaliation. According to the Ethics Office, it took OIOS 9 to 10 months to investigate a case, while the revised whistle-blower policy stipulated that it should take 120 days. According to the Ethics Office, the long timeframe was due to the fact that OIOS might not consider retaliation to be as pressing a matter as other high-risk cases, such as those involving sexual exploitation, abuse and harassment.

73. The Committee followed up with OIOS on this issue, and was informed that the investigation of retaliation cases was very much a priority. The Committee was informed that the average time taken to complete such an investigation was 200 days, with the longest 320 days and the shortest 127 days. OIOS further noted that, following the drive to strengthen the whistle-blower policy, the bar for retaliation had been set so low that there had been a flood of new cases, and that owing to the complexity of most retaliation cases, the time limit of 120 days was unrealistic.

74. **The Committee believes that the investigation of retaliation cases should be a priority given the high risk such cases present, and recommends that OIOS work to reduce the length of time it takes to investigate such cases.**

D. Financial reporting

75. During the reporting period, the Committee engaged in discussions with the Board of Auditors, the Under-Secretary-General for Management, the Controller and the Umoja Project Director on a number of issues relating to financial reporting. The issues discussed included:

(a) Implementation of Umoja;

(b) Internal control, especially as it pertains to delegation of authority and fraud prevention and detection;

(c) Issues and trends apparent in the financial statement of the Organization and the reports of the Board of Auditors.

Implementation of Umoja

76. On the status of the roll-out of Umoja, management informed the Committee of the completed deployments in 2017, including integration, parts of Umoja Extension 2 and phase two of the International Civil Service Commission compensation package. The Committee was also provided with a timeline for subsequent deployments, including phase three of the International Civil Service Commission compensation package (January 2018); travel for national staff (March 2018); and certain Umoja Extension 2 projects, including strategic planning, budget formulation and performance management; fundraising and donor relations; supply chain management (phase two); and implementing partners (September 2018). Additional parts of Umoja Extension 2 — phase three of supply chain management, and payments to troop- and police-contributing countries — would be implemented in December 2018.

77. With respect to roll-outs in 2018, the Committee was informed that Umoja Extension 2 (modules for strategic planning, budget formulation and performance management, fundraising and donor relations, supply chain management and implementing partners), a software upgrade, supply chain management (phase three), a module on conference and event management, and payments to troop- and police-contributing countries, would be rolled out.

78. The Committee was further informed that the strategic planning, budget formulation and performance management module would capture the entire cycle from strategic planning and budget execution to monitoring and reporting across all funding sources. Management noted that it would replace a disparity of systems and provide a 360-degree view for managers.

79. Furthermore, in discussions with several offices on how well Umoja was working, the Committee was informed that while Umoja had improved their day-to-day operations, some aspects, such as business intelligence, were still in their infancy.

For example, one entity indicated that it had had to invest in a new programme to do analytics.

80. The Committee asked management about that and was informed that the system's user-friendliness was still in development. Management further noted that with the demands for various types of business intelligence reports growing as users gained a better understanding of data and the capabilities of the system, the Administration acknowledged the importance of enhancing Umoja reporting to ensure a stronger foundation for leveraging the true potential of Umoja for decision-making. In that regard, the Committee was informed that several concurrent actions were under way, including:

(a) A management dashboard developed by the Office of Information and Communications Technology, in conjunction with the Umoja team, that would be rolled out shortly to all departments and offices. According to management, the dashboard would leverage Umoja data, along with data from other enterprise systems such as Inspira, and would give managers a comprehensive view of aspects such as human resources, posts, finances, travel, facilities, procurement and training;

(b) The roll-out of Umoja Extension 2, which would add programmatic reporting capabilities as resources would be linked to outputs and outcomes as part of results-based budgeting frameworks;

(c) The creation of a more responsive business intelligence development function by extending training and access to key businesses to staff working in procurement and supply chain management, which should address the user-friendliness concern noted above.

81. **The Committee welcomes the progress made in implementing Umoja, including the commitment to capture the Organization's cycle from strategic planning to reporting. Given the financial resources, effort and time that have been invested in developing and implementing Umoja, the Committee believes that capturing the full cycle would lead to the maximum exploitation of the potential that Umoja offers.**

Governance, risk and compliance module

82. The Committee recalled its prior recommendations that management put in place an audit module that took into account the needs of OIOS before the finalization of the design phase of Umoja. The Committee had previously been informed that a governance, risk and compliance module was being developed and could also function as an audit module, and that dialogue between OIOS, the Office of Programme Planning, Budget and Accounts and the Umoja team on the functionality of the governance, risk and compliance module was under way.

83. As a follow-up, the Committee asked management about the status of implementation of the governance, risk and compliance module and was informed that, while discussions had been held with both OIOS and the Office of Programme Planning, Budget and Accounts, the development and implementation of the module would have to factor in important changes impacting the project, arising from the reform proposals approved by the General Assembly. The management reform changes, in particular, including the simplification of the regulatory frameworks, the increased delegation of authority and the creation of two new departments (the Department of Management Strategy, Policy and Compliance and the Department of Operational Support), would alter the controls significantly. According to management, it would be more prudent to implement the governance, risk and compliance module after the new structures were in place, including the more urgent and functionally expansive Umoja Extension 2.

84. **The Committee believes that, like any other enterprise resource planning system, the Umoja governance, risk and compliance module could provide OIOS with an opportunity for continuous auditing through an embedded audit module, a common feature of governance, risk and compliance. While appreciating the challenges brought about by the reforms, the Committee still believes that an audit module is a critical enabler of a strong accountability system and should be considered high priority in the implementation of Umoja.**

Internal control system and anti-fraud policy

Ex ante controls versus ex post facto compliance

85. In his report on shifting the management paradigm in the United Nations (A/72/492), the Secretary-General noted that the focus of oversight mechanisms must shift away from ex ante control to ex post facto compliance. Such a shift would have implications for the internal control system, and as one of the responsibilities of the Committee is to advise the General Assembly on risk management and the internal control system of the Organization, it is important for the Committee to have a good grasp of this matter.

86. The Committee asked management what implications the shift from ex ante control to ex post facto compliance would have for the internal control system of the Organization. The Committee was informed that management was cognizant of the challenges and was taking steps to address them. Such steps included the new delegation of authority and improved accountability. Furthermore, the Committee was informed that with Umoja, there would be real-time visibility, making it easier for the newly approved Business Transformation and Accountability Division to do more effective monitoring for red flags.

87. **The Committee notes that the shifting of the focus from ex ante controls to ex post facto compliance will have significant implications for the Organization, as noted above. The Committee will continue to follow up with management on the steps taken to address those challenges.**

Statement of internal control

88. In its previous three reports (A/70/284, A/71/295 and A/72/295), the Committee reported on the statement of internal control, on the basis of regular updates from management. The statement of internal control is a public accountability document that describes the effectiveness of internal controls in an organization.[7]

89. During the current reporting period, the Committee was informed that the statement of internal control would be implemented in phases. The first phase would focus on external and internal financial reporting objectives, excluding non-financial ones. According to management, the result of that exercise would be the issuance of a statement of internal control accompanying IPSAS-compliant financial statements.

90. The Committee was further informed that the statement of internal control was set around four main work pillars covering the assurance process, training, the Internal Control Advisory Group and the Umoja governance, risk and compliance module. Additionally, the implementation of the statement of internal control would be built on five pillars, namely an internal control checklist based on the 17 principles of internal control developed by the Committee of Sponsoring Organizations of the Treadway Commission; the Umoja governance, risk and compliance module; two training videos, to be developed, describing the framework developed by the

[7] National Audit Office, *"The Statement on Internal Control: A Guide for Audit Committees"* (London, 2010).

Committee of Sponsoring Organizations of the Treadway Commission and the governance, risk and compliance module; the Internal Control Advisory Group; and a benefit realization exercise benchmarking current United Nations performance against the principles of the Committee of Sponsoring Organizations of the Treadway Commission as adapted for the United Nations.

91. According to the Controller, the Organization was building the governance, risk and compliance platform in Umoja with the hope of issuing the first statement of internal control in the 2020 financial statements.

92. The Committee was informed that the Internal Control Advisory Group was composed of six leading experts on enterprise risk management, internal control frameworks and the principles of the Committee of Sponsoring Organizations of the Treadway Commission. The objective of the Internal Control Advisory Group, which met twice a year, was to provide technical advice on the implementation of the statement of internal control across the Secretariat, so as to ensure technical compliance with the requirements of the internal control-integrated frameworks of the Committee of Sponsoring Organizations of the Treadway Commission, as adapted for the United Nations, at all times.

93. **The Committee reiterates its position that the statement of internal control is an important accountability tool through which an organization provides assurances that it is appropriately managing and controlling the resources under its responsibility. The Committee commends the progress made so far and will continue to monitor and report back on the situation in its future reports.**

94. **Additionally, the Committee recommends that management ensure that in the second phase, the remaining reporting objectives (non-financial) of the statement of internal control are appropriately captured in the accountability system of the Organization. This is all the more imperative given the management reforms under way, such as those noted in paragraphs 85 to 87.**

End-of-service liabilities

95. With respect to end-of-service liabilities, the Committee recalled its prior comments and recommendations contained in its reports of 2008 (A/63/328) and 2014 (A/69/304), in which the Committee had called upon the General Assembly to decide whether, how and to what extent the liabilities would be funded. Furthermore, during the Committee's discussions with various offices, the issue of employee benefits liabilities, specifically after-service health insurance, was noted by management as a major concern.

96. According to management, liabilities for after-service health insurance stood at $4.6 billion as at 31 December 2017, an increase of 18.8 per cent from the previous year. After-service health insurance accounted for 88.8 per cent of total employee benefits liabilities. The Committee was informed that the increase was attributable to updates in the demographic assumptions used in actuarial valuations, such as marriage rates, mortality tables and longevity improvement factors.

97. The Committee notes that the General Assembly endorsed the pay-as-you-go arrangement as a viable approach in various resolutions. According to management, however, that approach is not sustainable. The Board of Auditors agrees, noting that such an approach exposes the General Assembly to the risk of increasing cash costs in future periods.[8] The Committee was informed of a proposal to address the issue by fully funding after-service health insurance while maintaining the pay-as-you-go approach.

[8] A/69/5 (Vol. I), paras. 57–59.

98. **Given the risk this matter poses to the Organization, the Committee agrees with the Board of Auditors and reiterates its prior recommendation that the General Assembly revisit this matter with a view to ensuring that funding for end-of-service liabilities is placed on a sustainable path.**

Fraud risk assessment

99. With respect to fraud, the Committee's comments are guided by its previous observations and recommendations, and those of the Board of Auditors, the Joint Inspection Unit, the Advisory Committee on Administrative and Budgetary Questions and the General Assembly. In its previous report (A/72/295), paragraph 104, the Committee reported that a Fraud Risk Assessment Advisory Committee had been created, co-chaired by the Office of the Under-Secretary-General for Management and the Office of Programme Planning, Budget and Accounts. The Committee conducted an assessment to identify the most critical areas at risk of fraud and corruption in order to design a comprehensive anti-fraud and anti-corruption strategy and to implement proper mitigation measures. The assessment was based on a review of available historical data and losses suffered by the Secretariat and an extensive series of interviews and workshops held across the Secretariat, including consultations with the oversight bodies.

100. During discussions with management, the Committee was informed that 16 risks had been identified, of which 6 had been classified as critical and requiring immediate attention, namely:

(a) Organizational culture and accountability;

(b) Information and communications technology governance and cybersecurity;

(c) Umoja system control environment;

(d) Implementing partners;

(e) Theft of fuel rations and inventory;

(f) Procurement.

101. The Management Committee approved the risk register in February 2018 and corporate risk owners were assigned and tasked with the responsibility of developing detailed treatment and response plans.

102. With respect to OIOS, as noted in the Committee's previous report (A/72/295), tackling fraud and corruption have been given a renewed focus by the Office. According to the Investigation Division, fraud and corruption account for 35 per cent (52 cases out of 150) of all cases under investigation.

103. The Division informed the Committee that, in the light of those figures, the Organization must start confronting the issue of financial recovery, and that the Office for the Coordination of Humanitarian Affairs should revisit its funding agreements. The Division also acknowledged that, as noted by the Committee and the other oversight bodies, it was possible that the Division was merely scratching the tip of the iceberg because of underreporting.

104. **The Committee will continue to follow up on the steps taken by the Organization to develop and implement detailed risk mitigation plans for the most critical areas of fraud risk.**

E. Coordination among United Nations oversight bodies

105. During the reporting period, in addition to its regularly scheduled meetings with OIOS, the Committee met with other oversight bodies, such as the Joint Inspection Unit and the Board of Auditors, including the Audit Operations Committee. The dialogue allowed for the sharing of perspectives on matters of mutual concern and provided a useful opportunity for cooperation among United Nations oversight bodies.

106. The Committee sought comments from the three oversight bodies, all of which underscored the coordination mechanisms that existed among the three bodies, including the sharing of their programmes of work. In separate meetings with the Board of Auditors, the Joint Inspection Unit and OIOS, the Committee noted the positive relationship fostered through the tripartite coordination meetings of the oversight bodies and the sharing of workplans in an effort to avoid duplication. The Committee believes that such coordination provides a valuable platform for additional opportunities.

107. Furthermore, in December 2017, the Committee hosted the second meeting of representatives of United Nations system oversight committees. Twenty-four representatives from 19 oversight committees from organizations within the United Nations Secretariat, the United Nations funds, programmes and specialized agencies, and the World Bank attended the meeting.

108. At the meeting, participants continued the discussions from the previous meeting on common challenges and potential good practices in the work and conduct of the United Nations system oversight committees. Participants focused on how oversight committees could contribute to the assessment and understanding of organizational culture, looked at the need for common approaches to risk management, internal control and integrated assurance, and examined digital threats and the actions needed to protect United Nations system organizations.

109. The participants agreed that there were four common concerns, which were conveyed to the Secretary-General, in his capacity as Chair of the United Nations System Chief Executives Board for Coordination. The four issues were:

(a) The need for a common, recognized and credible approach to risk management;

(b) The fact that cybersecurity would be a critical enabler of the significant opportunities associated with digital transformation, including the contributions that could be made to improved operations and delivery of the 2030 Agenda. Additionally, the participants supported the adoption of a recognized and common system-wide cyber-risk management framework, fully integrated into entities' overall approach to enterprise risk management and business continuity;

(c) The low level of cyber-risk awareness among management and staff. Participants stressed the need for organizations to start developing in-house capability by leveraging external expertise to stay abreast of new developments;

(d) The challenge of introducing modern and standardized business processes, common frameworks and new ways of working. Participants noted that there were threats to successful business transformation, including change management, organizational culture and communicating such transformation projects to stakeholders.

F. Other matters

Ethics Office

110. The Committee spoke to the Director of the Ethics Office about measures to strengthen the independence of the Office. In his report on the activities of the Office (A/73/89), paragraph 94 (b), the Secretary-General provided a rationale for adding a reporting line to the Committee. The Committee looked at the best practices prevailing in United Nations system oversight entities and found that the majority of oversight committees had the review of the ethics function under their purview.

111. The Committee noted that some of the functions undertaken by the oversight committees with respect to the Ethics Office included:

(a) Reviewing and providing advice on workplans;

(b) Providing input to the performance appraisal of the Director of the Ethics Office;

(c) Advising on the appointment and dismissal of the Director of the Ethics Office;

(d) Reviewing and advising on the adequacy of the ethics function, including the code of ethics, financial disclosure and whistle-blower policies;

(e) Promoting understanding and the effectiveness of the ethics function;

(f) Providing a forum to discuss ethics-related matters.

112. **In view of the above, the Committee supports the Secretary-General's proposal to add a reporting line to the Committee. When considering the role of the Committee with respect to the Ethics Office, the General Assembly may wish to consider some or all of the functions noted in paragraph 111.**

G. Cooperation and access

113. The Committee reports that it received good cooperation from OIOS and senior management in the Secretariat, including the Department of Management, in discharging its responsibilities. The Committee was given appropriate access to staff, documents and information that it needed in order to undertake its work. The Committee is pleased to report that it continued to work closely with the Joint Inspection Unit and the Board of Auditors. The Committee looks forward to continued cooperation with the entities with which it interacts in order to discharge its responsibilities, as set out in its terms of reference, in a timely manner.

IV. Conclusion

114. In the context of its terms of reference, the Independent Audit Advisory Committee presents the preceding observations, comments and recommendations, as contained in paragraphs 16, 19, 23, 25, 32, 35, 40, 42, 46, 52, 59, 60, 62, 65, 68, 70, 74, 81, 84, 87, 93, 94, 98, 104 and 112, for the consideration of the General Assembly.

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Item 72 (b) of the provisional agenda*
Elimination of racism, racial discrimination, xenophobia and related intolerance: comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action

Contemporary forms of racism, racial discrimination, xenophobia and related intolerance

Note by the Secretary General

The Secretariat has the honour to transmit to the General Assembly the report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Tendayi Achiume, prepared pursuant to General Assembly resolution 72/157.

* A/73/150.

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Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

Summary

In the present report, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance analyses the threat posed by nationalist populism to the fundamental human rights principles of non-discrimination and equality. The focus of the report is ascendant nationalist populist ideologies and strategies that pose a sobering threat to racial equality by fuelling discrimination, intolerance and the creation of institutions and structures that will have enduring legacies of racial exclusion. The report condemns nationalist populism that advances exclusionary or repressive practices and policies that harm individuals or groups on the basis of their race, ethnicity, national origin and religion, including in combination with gender, sexual orientation, disability status, migratory status or other related social categories. The objectives of the present report are: (a) to contribute a measure of analytical clarity to human rights debates regarding nationalist populism; (b) to map the most pressing of the dangers it poses from a racial equality perspective; and (c) to recall the international human rights equality and non-discrimination standards that apply in this context.

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I. Activities of the Special Rapporteur

1. The present report is submitted pursuant to General Assembly resolution 72/157.

A. Country visits

2. The Special Rapporteur expresses her gratitude to the Government of the United Kingdom of Great Britain and Northern Ireland for the cooperation extended to her during her official country visit from 30 April to 11 May 2018.

3. The Special Rapporteur would like to thank the Governments of Brazil, Morocco, the Netherlands, Poland and Qatar for accepting her country visit reports. She urges Member States to respond positively to her outstanding requests[1] and urges the Government of Colombia to reverse its decision to postpone consideration of her country visit request.

B. Other activities

4. The activities of the Special Rapporteur from November to March 2018 are reflected in her report to the Human Rights Council at its thirty-eighth session (A/HRC/38/52). On 6 and 7 June, the Special Rapporteur participated in side events and informal meetings held on the margins of the fifth round of negotiations on the Global Compact for Safe, Orderly and Regular Migration. On 25 and 26 June, the Rapporteur participated in an expert round table on the theme "Citizenship stripping as a security measure" held in The Hague.

5. The Special Rapporteur presented her first report to the Human Rights Council on 2 July 2018 and took part in two parallel events: one on the draft declaration on the promotion and full respect of human rights of people of African descent and another on the theme "Challenging contemporary forms of racism, including laws, policies, practices and narratives against migrants and others associated with migration". She also convened a civil society consultation entitled "Building an international human rights anti-racism agenda in the shadow of populist nationalism".

II. The threat of nationalist populism to racial equality

A. Introduction: nationalist populism

6. Popular sovereignty and a commitment to national prosperity are principles entirely consistent with international human rights standards and have played important roles in the global pursuit of racial equality. However, ascendant nationalist populist ideologies and strategies pose a sobering threat to racial equality by fuelling discrimination, intolerance and the creation of institutions and structures that will have enduring legacies of racial exclusion. The Special Rapporteur condemns nationalist populism that advances exclusionary or repressive practices and policies that harm individuals or groups on the basis of their race, ethnicity, national origin and religion, in combination with gender, sexual orientation, disability status, migratory status or other related social categories. As nationalist populism in different forms has increased in popularity, many concerned with international human rights have spoken out regarding its dangers. The objectives of the present report are: (a) to contribute a measure of analytical clarity to human rights debates regarding

[1] Listed in A/HRC/38/52, para. 2.

nationalist populism; (b) to map the most pressing of the dangers it poses from a racial equality perspective; and (c) to recall the international human rights equality and non-discrimination standards that apply in this context.

7. There are different perspectives among political scientists regarding how best to conceptualize and define populism. Four leading approaches to defining populism are to treat it as an ideology, a form of discourse or rhetoric, a political strategy or a type of political logic.[2] The present report implicitly considers populism in all four modes.

8. Although the meaning of populism remains contested, there are a number of defining features that enjoy relative consensus in academic literature and capture the specific political phenomena at stake in the present analysis. Generally speaking, the ideology of populism focuses on societal cleavage between unaccountable or corrupt elites and "the people", a general populace viewed as exploited or neglected by those power-holding elites. In its most dangerous variants, populism deploys a monolithic, exclusionary vision of who qualifies as "the people." Those groups and individuals depicted as excluded from forming a part of "the people" then also become targets of populist antagonism, even if those groups and individuals have no elite status.[3] This has led one scholar to argue that populism is "an exclusionary form of identity politics".[4] Critical to a human rights understanding of dangerous populist mobilizations, then, is that they tend to be not just anti-elitist, but anti-pluralist, as discussed in more detail below.

9. There is a fair amount of consensus among populism scholars that populism is ideologically "thin-centred", and that its limited ideological content typically means that populism must be combined with some other ideology before it can be an effective political force.[5] As a result, populist movements and political parties occupy the broad spectrum of political positions, such that populist movements have existed in centre, left-wing and right-wing manifestations. Across Europe and in the United States of America, for example, contemporary populist fervour has largely reflected right-wing commitments, whereas in Asia and Latin America, centre and left-wing populist movements have had more pronounced successes.

10. Although populism on the right and the left commonly adopts anti-establishment positions, often calling for the dismantling of various liberal democratic institutions viewed as disadvantageous to the group identified as "the people", political scientists have found that right-wing populism tends to be inward-looking and primarily nationalist in its orientation, whereas left-wing populism has traditionally been oriented towards internationalism.[6] One reason for this is that "left-wing populist parties define the people on a class basis, referring mostly to the poor. In contrast, right-wing populist parties define the people on a cultural, nativist base".[7] Research has also found that, unlike left-wing populism, right-wing populism is notably hostile to minority rights.[8] This is not to say that left-wing populism cannot threaten human

[2] Ibid., chap. 2.

[3] Hanspeter Kriesi and Takis S. Pappas, "Populism in Europe during crisis: an introduction", in Kriesi and Pappas, eds., *European Populism in the Shadow of the Great Recession* (Colchester, United Kingdom, ECPR Press, 2015), p. 5.

[4] Jan-Werner Müller, *What is Populism?* (Philadelphia, University of Pennsylvania Press, 2016), p. 3.

[5] Cas Mudde and Cristóbal Rovira Kaltwasser, Populism: *A Very Short Introduction* (New York, Oxford University Press, 2017).

[6] Ruth Wodak, *The Politics of Fear: What Right-Wing Populist Discourses Mean* (London, Sage, 2015), p. 148.

[7] Robert A. Huber and Christian H. Schimpf, "On the distinct effects of left-wing and right-wing populism on democratic quality", *Politics and Governance*, vol. 5, No. 4 (2017), p. 148.

[8] Ibid., p. 151.

rights and racial equality. Although history, for example in Latin America, provides examples of left-wing populism that have improved the circumstances of marginalized groups through social reform, there are contemporary examples of left-wing populist governance presiding over extreme political repression and other human rights violations. This is partly because, even though left-wing populist parties generally do not target minorities per se, they can often reject political competition and claim the sole right to rule.[9] It is thus important to underscore that populism in its dangerous forms on both the left and the right exhibits anti-pluralist commitments.[10]

11. The present report centres on nationalist populism to highlight the specific threats to racial equality that arise when these two orientations are combined. Nationalist populism — especially when it is adopted by ethno-nationalists — tends to limit "the people" to a particular racial, ethnic or religious group understood to be the only legitimate national group. Right-wing populists champion this ethno-nationalist conceptualization of "the people" using the increasingly multicultural nature of societies as evidence of an imminent threat against the survival and preservation of the nation. Right-wing nationalist populists regularly take the additional step of arguing that those identified as "the people" are long-suffering victims of multicultural society, and that multiculturalism itself is a driver of socioeconomic decline for "the people". The strategy, then, is not just to target elites, but also to target multiculturalism and members of minority races, ethnicities and religions as all part of the problem. Racial, ethnic and religious minorities are relegated to the status of illegitimate interlopers whose interests are characterized as oppositional to those of the group exclusively designated as constituting "the people". Thus, when nationalist populists appropriate the language of democratic legitimacy and representation of "the people", this language masks exclusionary and typically racialized conceptions of the nation that are at odds with liberal conceptions of democracy.

12. Where ethno-nationalist populism is a feature of government, those in power can begin to oversee the rewriting of national history — including to deny the Holocaust, for example — in order to reaffirm a racially, religiously or ethnically specified conception of who "the people" are.[11] And even if nationalist populists do not win seats in government, their participation in public discourse and the electoral process can nonetheless result in a shift in the mainstream political discourse to embrace previously marginal, exclusionary positions.[12] Some of these discourses include a commitment to ethno-nationalist versions of national history that suppress the vital contributions that racial, ethnic and religious minorities have made to build the respective nations. Ethno-nationalists can seek to write minorities out of the history of the nation. The most recent report of the Special Rapporteur to the Human Rights Council includes a more detailed analysis of ethno-nationalism as a threat to racial equality, and of the interaction between neo-Nazi and other extremist ideologies with populist mobilizations.[13]

13. Nationalist populism often successfully advances heteronormative, patriarchal visions of the nation, and a version of "traditional values" that leads to serious violations against marginalized social groups (including women, gender and sexual minorities, and persons with disabilities), especially when those who are socially marginalized are also racial, ethnic or religious minorities. It shores up the dominance

[9] Ibid., p. 148.

[10] Müller, *What is Populism?*, p. 3 ("In addition to being anti-elitist, populists are always anti-pluralist").

[11] A Croatian submission highlighted government-sanctioned historical revisionism along these lines.

[12] See Wodak, *The Politics of Fear*, p. 184 (noting the normalization of right-wing populist policies that push the entire political spectrum to the right).

[13] See A/HRC/38/52.

of men and enforces rigid gender roles, denying women and others full agency, especially over their reproductive and sexual rights. Non-conforming women become a target for populist nationalists, who in some cases carry out misogynist online and other attacks against these women. Nationalist populist fervour in some parts of the world has also advanced a backlash against equal rights for lesbian, gay, bisexual, transgender, queer and intersex (LGBTQI) persons in ways that deny their inherent human dignity and entitlement to full enjoyment of human rights. A comprehensive racial equality analysis of nationalist populism must keep sight of the ways that multiple intersecting social identities transform the experience of racial discrimination in this context, as they do in others. It must also keep sight of the ways that States use patriarchal, gender-discriminatory laws to achieve racial, ethnic and religious exclusion, as canvassed in this mandate's most recent report to the Human Rights Council.[14]

14. There is reason to believe that new forms of media have aided or amplified the influence of nationalist populism, and leaders of these movements have been especially successful at exploiting new media technology (including social media) for their benefit. Research has highlighted, for example, the role of increasingly diversified media that focus more on sensationalism, which is a communication style favoured by populists.[15] The provocative nature of nationalist populist leaders is appealing in media industries structured around sensationalism and the reporting of scandalous news, in order to increase readership. Even as nationalist populists have profited from media, however, they have been characteristically repressive of free and independent media. Media outlets that are critical of populist leaders are often described by populists as agents of the corrupt "elite" or outsiders, accused of producing "fake news", and may even face the risk of being prevented from operating, as discussed below.

15. Rightly, the United Nations High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, has taken a bold stand, publicly denouncing a number of populist leaders who have been willing to stoke racism, xenophobia and related intolerance with little regard for the human rights of many within the borders of their countries: Norbert Hofer (Austria), Miloš Zeman (Czechia), Marine Le Pen (France), Viktor Orbán (Hungary), Geert Wilders (Netherlands), Robert Fico (Slovakia), Nigel Farage (United Kingdom) and Donald Trump (United States), among others.[16] The High Commissioner's response to the Prime Minister of Hungary in particular illustrates the false claims that often lie at the heart of nationalist populist demagoguery. In February 2018, Prime Minister Orbán made a statement before a group of city councils in which he said that "we do not want our colour ... to be mixed in with others".[17] The High Commissioner noted that the latest census in Hungary, which has a total population of just under 10 million,[18] indicates that 1,064 men and 260 women from Africa, a total of 10,559 people from all of Asia, and too few from the Middle East to even be counted live in Hungary. Yet Prime Minister Orbán has managed to portray Muslims and Africans as an existential menace to Hungarian culture. Denouncing the racist and xenophobic lies of populist nationalists remains an urgent priority.

[14] Ibid.

[15] Benjamin Moffit, *The Global Rise of Populism: Performance, Political Style and Representation* (Stanford, California, Stanford University Press, 2016).

[16] "Zeid Ra'ad Al Hussein, United Nations High Commissioner for Human Rights, "Zeid warns against populists and demagogues in Europe and the United States", statement to the Peace, Justice and Security Foundation gala, The Hague, 5 September 2016.

[17] OHCHR, "Hungary: opinion editorial by United Nations High Commissioner for Human Rights Zeid Ra'ad Al Hussein", available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22765.

[18] See www.ksh.hu/nepszamlalas/?lang=en.

B. Global and regional trends: a racial equality analysis

16. This section aggregates different types of racially discriminatory human rights violations associated with nationalist populism around the world. Examples are drawn from different sources, including submissions received by the Special Rapporteur in response to her call for input for the present report.[19] Contemporary trends include individualized and structural threats, and require an intersectional analysis to account for the ways in which other social categories such as gender, sexual orientation and disability status can compound and alter the experience of discrimination and intolerance rooted in nationalist populism.

Racist and xenophobic violence, hate crimes and hate speech

17. Perhaps the most visible impact that resurgent nationalist populism has had on racial equality has been to escalate incidents of racist and xenophobic violence, crimes and speech all over the world. It has also aided the spread and mainstreaming of messages of intolerance that had typically been confined to marginal, extremist platforms.

18. With respect to Europe, the European Union Agency for Fundamental Rights, in a 2016 report on hate crimes, highlighted the pervasive nature of violence, harassment, threats and xenophobic speech targeting asylum seekers and migrants, as well as persons with visible ethnic backgrounds, and Muslims (especially women). Human rights activists, pro-refugee politicians as well as journalists reporting on refugee issues were also targets. Perpetrators of hate incidents and crimes included State authorities, private companies and individuals and vigilante groups.[20] These incidents and crimes have varied in intensity and sometimes resulted in killings. For example, the same report noted that in October 2015, an Afghan asylum seeker had been shot dead by Bulgarian police after crossing the Bulgarian-Turkish border. In Fermo, Italy, a Nigerian asylum seeker, reacting to racist insults addressed at his wife, was beaten to death with an iron pole. In 2018, three migrants were shot while attempting to remove iron materials from an abandoned factory in Calabria. One of them, a young Malian man who was a union-worker activist, died.[21] Attacks of a violent nature against asylum accommodation and reception centres were reported in all European Union member States, but very few of them systematically record incidents and publish public reports.[22]

19. Nationalist populist political parties and even elected officials have been among the worst offenders where racist and xenophobic speech is concerned. The European Commission against Racism and Intolerance, in its general policy recommendation No. 15 on combating hate speech, adopted on 8 December 2015, decried this trend, noting that the cultivation and dissemination of racist, xenophobic and neo-Nazi ideas and hate speech has not been limited to extremist organizations.[23] Mainstream parties and leaders, including parliamentarians, have participated in these activities and continue to do so. In a 2014 report, the European Network against Racism suggested that during the 2014 electoral campaign for the European Parliament, 42 hate speech

[19] See www.ohchr.org/EN/Issues/Racism/SRRacism/Pages/ImpactOfNationalistPopulism.aspx.

[20] European Union Agency for Fundamental Rights, *Current Migration Situation in the EU: Hate Crime* (Vienna, 2016).

[21] European Union Agency for Fundamental Rights, "Periodic data collection on the migration situation in the EU", July 2018, lists a number of violent incidents against asylum seekers and refugee reception facilities.

[22] European Union Agency for Fundamental Rights, *Current Migration Situation in the EU*.

[23] European Commission against Racism and Intolerance, general policy recommendation No. 15 (2015) on combating hate speech, para. 24.

incidents were reported.[24] Out of the persons who proffered hate speech, five became members of the European Parliament. Out of 42 reported hate speech incidents against minorities, the most frequent form (27 reported incidents) involved implicit incitement to hatred, prejudice or discrimination. The Network estimates that more than 10 per cent of the members of the European Parliament are from parties propagating racist and/or xenophobic ideas. Candidates and other politicians have most frequently attacked migrants, foreigners and asylum seekers, sexually diverse populations, Muslims and Roma people.

20. In Australia and the United States and across Europe, politicians in government have used print and social media unapologetically to make racist and xenophobic statements that have included promises to adopt policies targeting specific racial, ethnic and religious groups, even when such policies would violate existing laws. In July 2018, the Minister of the Interior of Italy defied a decision by the Supreme Court of Cassation of Italy[25] in which the Court ruled that telling non-European Union foreigners to leave the country qualifies as racial discrimination. He responded to the ruling through a Facebook post, writing "Go home, go home, go home!" above a picture of a group of black African men.[26] In this climate of public intolerance, Italy has seen a stark increase in the number of seemingly hate-motivated violent attacks (including killings) since the beginning of 2018.[27]

21. In the United States, President Donald Trump's xenophobic nationalist populist rhetoric has consistently stigmatized and vilified migrants, refugees and racial and ethnic minorities. According to the latest official United States hate crime statistics,[28] published for 2016, law enforcement agencies reported 6,121 hate crimes, of which 57.5 per cent were motivated by race, ethnicity or ancestry.[29] These numbers represent an increase since 2015.

22. The report of this mandate on Nazism, neo-Nazism and related intolerance, presented to the General Assembly at its seventy-second session, focuses on racist expression online, which is where many incidents of racist and xenophobic speech also occur. For example, in January 2018 the World Jewish Congress recorded that anti-Semitic posts on social media, including Holocaust denialism, had risen by close to 30 per cent compared with the same period in 2016.[30]

23. In parts of Africa, nationalist populist hate speech has often crystallized during electoral campaigns. Incitement to violence or hatred, including by politicians, community leaders or journalists, in the most extreme cases has resulted in gross human rights violations. On the continent, politicians have often used nationalist populist rhetoric to capitalize on legitimate long-standing, colonial-era grievances over land rights and other issues to galvanize illegitimate racial intolerance. The recent history of Zimbabwe offers an example.[31] In 2017, the Kenya National

[24] European Network against Racism, "Reporting hate speech in the #EP2014 campaign".

[25] Elaine Allaby, "Telling migrants to 'go home' is racism, rules Italy's top court", *The Local*, 13 July 2018.

[26] Ibid.

[27] Lunaria, "Il ritorno della 'razza'", Focus N.4/2018, June 2018.

[28] Data on the number of incidents, offences, victims and offenders in reported crimes that were motivated in whole or in part by a bias against the victim's perceived race, religion, national origin or disability.

[29] United States, Federal Bureau of Investigation, 2016 Hate Crime Statistics database, available at https://ucr.fbi.gov/hate-crime/2016/topic-pages/incidentsandoffenses.

[30] See A/HRC/38/53, para. 19.

[31] E. Tendayi Achiume, "The SADC Tribunal: sociopolitical dissonance and the authority of international courts", in Karen J. Alter, Laurence R. Helfer and Mikael Rask Madsen, eds., *How Context Shapes the Authority of International Courts* (New York, Oxford University Press, 2017), p. 17.

Commission on Human Rights, in its alternative report to the Committee on the Elimination of Racial Discrimination,[32] noted that "the use of hate speech along ethnic lines and derogatory remarks about other tribes, races and communities has become the hallmark for Kenya's political rallies during the run-up to the [2017] elections" and that incitement to violence contributed significantly to electoral violence in that country's 2007 and 2012/13 electoral cycles.[33] In South Africa, political leaders have engaged in nationalist populist xenophobic rhetoric, sometimes indirectly legitimizing the spread of xenophobic violence. One political leader in that country was found guilty of hate speech and incitement to violence against white South Africans.[34] In India, the election of the Hindu nationalist Bharatiya Janata Party (BJP) has been linked to incidents of violence against members of Dalit, Muslim, tribal and Christian communities. Reports document the use of inflammatory remarks by BJP leaders against minority groups, and the rise of vigilantism targeting Muslims and Dalits.[35]

24. In its most extreme form, the implementation of majority will with no regard for minority rights results in genocide and ethnic cleansing. In Myanmar, for example, nationalist populist rhetoric capitalizing on decades of prejudice and State-sponsored discrimination against Rohingya Muslims has led to a campaign of extreme violence against the minority, amounting to ethnic cleansing and crimes against humanity.[36] In 2016, the Office of the United Nations High Commissioner for Human Rights (OHCHR) reported that since the 1990s, "extremist or ultra-nationalist Buddhist organizations have actively promoted messages of hatred and intolerance against Muslims and other religious minorities. Groups including the Organization for the Protection of Race and Religion (known as MaBaTha) spread messages based on fear and hatred, compare Muslims to animals, use derogatory language and present Muslims as a threat to the 'Buddhist State'".[37] OHCHR also found that ultra-nationalist Buddhist organizations also targeted moderate Buddhists, interfaith activists, women's rights activists and the Special Rapporteur on the situation of human rights in Myanmar.[38] In March 2018, the Special Adviser on the Prevention of Genocide unequivocally confirmed that "international crimes were committed in Myanmar. Rohingya Muslims have been killed, tortured, raped, burned alive and humiliated, solely because of who they are".[39] The independent international fact-finding mission on Myanmar noted in March 2018 that it had no information on any attempts by the Government to combat hate speech and other violations to protect the fundamental rights of Rohingya, including the right to life.[40]

Institutionalization of structural and other forms of exclusion

25. In the light of its exclusionary anti-pluralism, nationalist populist governance can result in systemic political, social and other forms of exclusion of groups or

[32] Submission to the Committee on the Elimination of Racial Discrimination.

[33] Ibid.

[34] See South Africa, Equality Court, *Afri-Forum and Another v. Malema and Others*, case No. 20968/2010, judgment of 12 September 2011; see also OHCHR, "Report from OHCHR fact-finding mission to Kenya, 6–28 February 2008", available at www.ohchr.org/Documents/Press/OHCHRKenyareport.pdf.

[35] Human Rights Watch, submission to the Human Rights Council universal periodic review of India, 2016.

[36] See A/HRC/32/18.

[37] Ibid., para. 22.

[38] Ibid.

[39] Adama Dieng, Special Adviser to the Secretary-General on the Prevention of Genocide, statement on his visit to Bangladesh to assess the situation of Rohingya refugees from Myanmar, 12 March 2018.

[40] Marzuki Darusman, Chair of the Independent International Fact-Finding Mission on Myanmar, statement to the Human Rights Council at its thirty-seventh session, Geneva, March 2018.

individuals labelled as falling outside of the group designated as "the people". This structural exclusion is achieved through discriminatory laws and policies that pursue, among other things: voter suppression aimed at racial, ethnic and other minorities; constitutional and legislative amendments to exclude certain groups from political life on racial, ethnic, religious or other grounds; and restriction of access to public goods and services and even to equality before the law on racial, ethnic, religious or other grounds.

26. Once they are in government, nationalist populists often deploy a range of tactics to disenfranchise groups portrayed as outsiders, including racial and ethnic minorities. These might include, for example, seemingly race-neutral measures imposing specific photo identification and other requirements that disproportionately exclude marginalized groups from voting.

27. An example of more blatant institutionalized ethnic and religious exclusion can be found in the preamble to the Hungarian Constitution of 2011, which portrays Hungary as "a nation of Christians, ethnically distinct from minorities living alongside the 'real' Hungarians".[41] Further advancing racial and ethnic exclusion, in June 2018 the Hungarian Parliament adopted the Seventh Amendment to the Fundamental Law and a legislative package called "Stop Soros", which amends the Aliens, Asylum and Police Acts as well as the Criminal Code. The new laws prohibit the settlement of non-European immigrants in Hungary. They restrict the right to asylum and prohibit entry and stay in designated areas of the country. Furthermore, they criminalize providing support to irregular migrants.[42] Civil society submissions have also highlighted the rise in racially discriminatory immigration laws and policies in the country, driven by nationalist populist ideology and diminishing the rights of non-nationals to employment, education and health care.

28. Nationalist populist parties in other places have implemented administrative and other rules leading to the exclusion of minority groups from official citizen registries on the basis of claims that they are irregular migrants, notwithstanding evidence showing that they are entitled to citizenship. This in turn has led to statelessness, disenfranchisement and increased vulnerability to discrimination, including the denial of basic rights and access to public services such as health and education. In May 2018, the Special Rapporteur addressed a letter to the Government of India concerning the updating of the National Register of Citizens, a process governed by local authorities in the state of Assam. The letter drew attention to the heightened concerns of the Bengali Muslim minority, who have historically been portrayed as foreigners despite having lived in India for generations, even preceding the colonial era. Since 1997, the Election Commission of India has arbitrarily identified a large number of Bengali people as so-called "doubtful or disputed voters", resulting in their further disenfranchisement and the loss of entitlements to social protection as Indian citizens.[43] While many have affirmed that the updating process is generally committed to retaining Indian citizens on the National Register of Citizens, concerned parties fear that local authorities in Assam, who are deemed to be particularly hostile towards Muslims and people of Bengali descent, may manipulate the verification system in an attempt to exclude many genuine Indian citizens from the updated Register.[44]

[41] Cristóbal Rovira Kaltwasser and others, eds., *The Oxford Handbook of Populism* (New York, Oxford University Press, 2017), p. 599.

[42] European Union Agency for Fundamental Rights, "Periodic data collection".

[43] Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, communication on legislation and policy, other letter IND 13/2018, 11 June 2018.

[44] Ibid.

29. In her most recent report to the Human Rights Council, the Special Rapporteur denounced the growing number of States that have threatened to adopt, or even adopted, blanket bans against refugees and other non-nationals of particular religious affiliation or national origin, most commonly Muslims and residents of Muslim-majority countries. In the United States, such bans have been implemented by the executive orders of a President who has publicly made racist, xenophobic and Islamophobic statements against non-nationals as well as United States citizens belonging to racial and ethnic minorities. President Trump's nationalist populist agenda has also included policies separating thousands of children from their asylum-seeking families at the southern border of the United States, which have rightly drawn global condemnation.[45]

30. Also in her most recent report to the Human Rights Council, the Special Rapporteur highlighted the racialized impact that nationalist populist mobilizations can have on counter-terrorism policy.[46] Populists in Europe and beyond have capitalized on the increased number of terrorist attacks in the past two years to garner support for policy proposals that are blatantly discriminatory and legitimize profiling in security-related surveillance that targets mainly Muslim communities. In her report, she explains why such policies violate equality and non-discrimination principles.

Shrinking of liberal democratic and civic space

31. Empirical research has shown that "populist parties in government and opposition are negatively associated with mutual constraints [including separation of powers] compared to instances where no populist parties are in government or opposition".[47] Evidence shows that, generally, nationalist populist Governments have tended to exacerbate corruption and to weaken the mechanisms of checks and balances that are intended to prevent the illegitimate usurpation of power by any one branch of government or political party. They have also tended to suppress civil society, all in the name of the will of "the people".

32. In Asia, as in other regions, nationalist populist leaders have cracked down on political dissent, vilifying anyone with different political views as an enemy of the people and thus to be disposed of. Populist traditional values and law and order rhetoric, for example, in the Philippines, have sustained brutal extrajudicial killings of so-called drug users.[48] Government attacks in that country have also targeted those committed to defending the rule of law. For example, the populist leader of the Philippines threatened and insulted a Chief Justice of the Supreme Court after she had expressed concerns regarding threats to the rule of law. The Chief Justice was voted off the Court two days later, prompting the Special Rapporteur on the independence of judges and lawyers to issue a statement of concern.[49] The erosion of judicial institutions that otherwise function as central to the defence of racial, ethnic, sexual, gender and other minorities makes those groups even more vulnerable to discriminatory treatment.

33. Nationalist populists in Latin America have presided over the systemic oppression and repression of political opponents, including the use of deadly violence. The Inter-American Commission on Human Rights has documented this

[45] OHCHR, "United Nations experts to United States: 'Release migrant children from detention and stop using them to deter irregular migration'", 22 June 2018.

[46] See A/HRC/38/52.

[47] Huber and Schimpf, "On the distinct effects of left-wing and right-wing populism on democratic quality", p. 151.

[48] Rainer Eizenberger and Wolfram Schaffer, "The political economy of new authoritarianism in Southeast Asia", *Austrian Journal of South-East Asian Studies*, vol. 11, No. 1 (2018).

[49] OHCHR, "*Judicial independence in Philippines is under threat*, says United Nations human rights expert", 1 June 2018.

political repression, which has included the criminalization of political speech in the Bolivarian Republic of Venezuela.[50] Human rights defenders, especially those representing racially subordinated groups, also face the risk of death and assassination in many countries where populist law and order narratives are used to justify the criminalization and militarization of socioeconomically marginalized communities. The Commission has documented the acquiescence and, in some cases, the outright support of nationalist populist parties in control of the State regarding violence against human rights defenders, including those representing Afrodescendants and indigenous peoples. This has been the case in Honduras.[51]

34. Nationalist populism has also seriously threatened civil society organizations, including human rights organizations providing support to minority groups, migrants and refugees and other marginalized groups. In May 2018, the Committee on the Elimination of Racial Discrimination expressed its urgent concern at the decision of the State Prosecutor of the Philippines to file a court petition that would have criminalized 600 members of civil society, many of whom were indigenous leaders and human rights defenders.[52] The Special Rapporteur on the rights of indigenous peoples, a former member of the Permanent Forum on Indigenous Issues and a former member of the Expert Mechanism on the Rights of Indigenous Peoples were all among those listed.

35. The Special Rapporteur on the situation of human rights defenders, in his 2018 report to the Human Rights Council, denounced unprecedented restrictions, including denunciation in public discourse, intimidation and criminalization of individuals, groups and communities defending the rights of people on the move. Those who have conducted search and rescue operations at sea have been arrested, had their boats seized and been accused of smuggling.[53]

36. In Italy, after the anti-establishment Five Star Movement and the Northern League formed a coalition Government, the new Minister of the Interior restricted the movement of a civil society organization conducting search and rescue of irregular migrants' boats at sea, and threatened them with potential legal action. Rescue boats have also been prevented from docking at the nearest port of safety, as was the case with the *Aquarius* in Italy in June 2018.[54] The Office of the United Nations High Commissioner for Refugees (UNHCR) has expressed concern about the impact of a more limited search and rescue capacity if boats are discouraged from responding to distress calls out of fear of being denied permission to disembark. UNHCR reported that in June 2018 alone, 1 person had died for every 7 who had crossed the Central Mediterranean, compared with 1 in 19 in the first half of 2018 and 1 in 38 in the first half of 2017.[55]

37. In June 2018, Hungary criminalized individuals and groups deemed to be supporting asylum seekers, refugees and undocumented migrants. The law in question

[50] Inter-American Commission on Human Rights, *Democratic Institutions, the Rule of Law and Human Rights in Venezuela* (2017).

[51] Inter-American Commission on Human Rights, *Situation of Human Rights in Honduras* (2015), paras. 57, 64, 85–89 and 92.

[52] OHCHR, "Philippines: United Nations racial discrimination experts voice concern at 'terrorist' list", 14 May 2018; see also OHCHR, "Philippines warned over 'massive' impact of military operations on Mindanao indigenous peoples", 27 December 2017.

[53] See A/HRC/37/51, para. 1.

[54] Maria Grazia Giammarinaro, Special Rapporteur on trafficking in persons, especially women and children, statement to the Human Rights Council at its thirty-eighth session, Geneva, 20 June 2018.

[55] Office of the United Nations High Commissioner for Refugees (UNHCR), "As Mediterranean Sea arrivals decline and death rates rise, UNHCR calls for strengthening of search and rescue", briefing note, 6 July 2018.

makes it a criminal offence for any lawyer, adviser, volunteer or legal resident family member to provide support to anyone seeking to lodge an asylum claim or obtain a residence permit, or provide other legal or humanitarian assistance, including distributing information on migration-related matters, providing advice to migrants and refugees, and conducting human rights monitoring at borders.[56] In June 2018, the Hungarian authorities announced that they would also introduce a 25 per cent tax on funding for non-governmental organizations that "support immigration".[57]

38. An Eastern European submission raised concerns about populist government censorship and control over media, as well as about smear campaigns and public intimidation targeting human rights defenders. In the Philippines, independent media have been under attack as well. In January 2018, a group of United Nations Special Rapporteurs issued a statement of urgent concern at the revocation of the media licence of a Filipino outlet that had produced critical coverage of President Rodrigo Duterte and his deadly "war on drugs".[58] Affiliates of the media outlet had received harsh criticism from the President and his supporters, including threats of violence.

39. A recent United Nations report documents the use of an emergency decree to crack down on independent media sources in Turkey, including when such sources have been tied to efforts to promote dialogue on issues relating to Kurds.[59] According to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, "The crackdown affects media outlets affiliated with the Gülen movement and journalists working or having previously worked for such outlets, journalists perceived to have connections to the Gülen movement, independent, oppositional or minority media outlets and journalists accused of affiliation with the Gülen movement".[60] He has also warned of the more general contraction in civic and political space in Turkey.[61]

Patriarchy, heteronormativity and "traditional values"

40. As indicated above, nationalist populist rhetoric and policy regularly advocates a heteronormative, patriarchal vision of the nation and a return to "traditional values". "Traditional values" are often patriarchal, heteronormative practices and norms that severely constrain the autonomy of women. Such values also constrain the autonomy of non-conforming gender and sexual minorities, who, because they are cast as "other", do not enjoy the status of "the people" as legitimate beneficiaries of the nation. Across Europe, in countries that have experienced the rise of right-wing nationalist populists, the number of hate crimes and incidents against LGBTQI individuals has risen.[62] With regard to Asia, researchers have argued that, notwithstanding the diversity in populist ideology across the continent, the notion of "Asian values" has been used by authoritarian populist leaders to justify attacks against those deemed not to conform to such values.[63]

[56] Reference to the "Stop Soros" law package, original publication available at http://njt.hu/cgi_bin/njt_doc.cgi?docid=209036.356012. http://europa.eu/rapid/press-release_IP-171982_en.htm.

[57] OHCHR, "New Hungary legislation 'shameful and blatantly xenophobic' — Zeid", 21 June 2018.

[58] OHCHR, "United Nations experts express serious alarm at effort to shut down independent media outlet in the Philippines", 25 January 2018.

[59] See A/HRC/35/22/Add.3, para. 36.

[60] Ibid., para. 39.

[61] Ibid., para. 58.

[62] For example, this was the case in the United States in 2016, when, according to the Federal Bureau of Investigation, 6,121 hate crime incidents were reported, representing an increase of 5 per cent compared with 2015. Of those 6,121 incidents, 1,076 were based on sexual orientation bias and 124 on gender identity bias, reflecting increases of 2 per cent and 9 per cent, respectively. See Federal Bureau of Investigation, 2016 Hate Crime Statistics database.

[63] Eizenberger and Schaffer, "The political economy of new authoritarianism in Southeast Asia".

41. Among ethno-nationalist populists, rhetoric about preserving the "pure, authentic people" is often closely linked to sexual and reproductive rights. Feminism, which at its core is about realizing women's right to equality, is also portrayed as antithetical to the nation. For example, a 2010 presidential candidate for the Freedom Party of Austria supported by the far right publicly criticized feminism and efforts to promote gender mainstreaming, and argued that the legal definition of marriage presumed the intention to produce and raise children.[64] In the United States, abortion and even contraception have been portrayed as a threat to traditional, white patriarchal conceptions of the family. Female candidates affiliated with the Tea Party movement, among them Michele Bachmann and Sarah Palin, went so far as to argue that abortion should be outlawed, even in cases of rape.[65] Also in the United States, the nationalist populist President has promoted misogyny by repeatedly making statements publicly demeaning women. Beyond attacks against purely women's rights, in some countries, nationalist populists have advocated constitutional amendments aimed at an exclusively heterosexual definition of marriage in order to prevent same-sex couples from marrying.[66]

42. Minority women have been especially vulnerable to right-wing ethno-nationalist populism. For example, in much of the political debate across Western Europe, the veiled Muslim woman is deployed as the symbol of the "other" who does not belong.[67] The imagery of the veiled Muslim woman is also used to argue that misogyny is inherent in Islam. Countries that prohibit persons from wearing an Islamic veil in public effectively exclude many Muslim women from public spaces, and courts in some places have been swift to respond to this issue. For example, in the summer of 2016, about 30 municipalities, located mainly in southern France, issued decrees prohibiting the wearing of the Islamic swimsuit on the basis that it constituted a religious sign, in breach of the principle of secularism, and did not conform to hygiene and safety rules for those bathing in the sea.[68] The highest administrative court of France ordered the suspension of the execution of those municipal decrees, on the basis that they constituted an unjustified, serious breach of the fundamental rights to freedom of movement, personal freedom and freedom of conscience.

43. In other parts of the world, nationalist populist mobilizations have limited the access of minority women to sexual and reproductive health through administrative and financial barriers. Some countries have more explicitly discriminatory policies in place. For many years, the Government of Myanmar subjected Rohingya women to a strict two-child policy, and those found "to have violated restrictions on childbirth were prosecuted under Criminal Law section 188, which could result in imprisonment for up to 10 years, fines or both".[69] Fear of repercussions from authorities for unauthorized childbirth and the lack of access to safe, modern birth control options to prevent unwanted pregnancies had often led pregnant Rohingya women to either flee the country or resort to illegal and unsafe abortions.[70]

[64] Wodak, *The Politics of Fear*, pp. 13–14.

[65] Ibid, pp. 16–17.

[66] Human Rights House Zagreb submission.

[67] See Wodak, *The Politics of Fear*.

[68] OHCHR, "Press briefing notes on France and Bolivia", 30 August 2016.

[69] Human Rights Watch, "Submission to the Committee on the Elimination of Discrimination against Women regarding Myanmar's exceptional report on the situation of women and girls from northern Rakhine State", May 2018, p. 7.

[70] Ibid., p. 8.

C. The applicable legal framework

44. Insofar as nationalist populism advances ideologies of racial superiority and practices and structures of discriminatory exclusion and intolerance on grounds of race, colour and national or ethnic origin, it runs directly counter to international human rights law and principles. This section explains how racist and xenophobic expression contravenes existing international human rights obligations. It begins with an overview of States' legal obligation to combat the structural effects of nationalist populism, such as institutionalized discrimination and exclusion, and the shrinking of civic and democratic space, all of which should be seen as undermining racial equality.

Structural or institutionalized discrimination and exclusion

45. As discussed above, nationalist populist rule can lead to institutionalized legal and policy measures that violate the obligations of Member States to uphold the rights to non-discrimination and equality before the law for all. Article 1 (1) of the International Convention on the Elimination of All Forms of Racial Discrimination defines racial discrimination as "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life". The Special Rapporteur would like to recall that the prohibition on racial discrimination in international human rights law is aimed at much more than a formal vision of equality. Equality in the international human rights framework is substantive and requires States to take action to combat intentional or purposeful racial discrimination, as well as to combat de facto or unintentional racial discrimination. The Committee on the Elimination of Racial Discrimination underscored that States have an obligation to dismantle discriminatory structures, in addition to tackling intentional discrimination.

46. This framework for substantive racial equality means that all measures that are aimed at voter suppression, or that undermine judicial independence, threaten the lives of human rights defenders and undermine press freedom, all in the service of advancing non-plural, mono-racial, mono-ethnic or mono-religious nations, must be addressed as a matter of urgency by Member States. These mechanisms, which directly and indirectly target and undermine the rights of marginalized racial, ethnic, national or religious groups, must be understood as contravening the prohibition of racial discrimination under international human rights law.

47. Noting in particular the dramatic increase in law and policy in right-wing nationalist populist contexts targeting the rights of non-nationals, the Special Rapporteur would like to recall the international legal framework applicable to non-nationals, as laid out in her most recent report to the Human Rights Council.[71] She reiterates that, while States have the sovereign right to regulate immigration, they must not do so in violation of their racial equality and non-discrimination obligations. In this regard, she also reiterates that laws and policies on immigration must not discriminate, in purpose or effect, on the basis of race, colour or national or ethnic origin. In particular, in the context of counter-terrorism, immigration and other measures must comply with the prohibition of racial discrimination, including with regard to racial and ethnic profiling or stereotyping.

48. It is equally important to recall that the rights outlined in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms,

[71] See A/HRC/38/52, paras. 16–21.

including the freedoms of assembly, expression and association, apply to all persons everywhere. International human rights law requires States to respect, protect and fulfil the rights of defenders, including those fighting for racial equality and on behalf of migrants.[72] Moreover, the 1982 United Nations Convention on the Law of the Sea, in its article 98, establishes the duty (a) "to render assistance to any person found at sea in danger of being lost" and (b) "to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance". The same article stipulates that "every coastal State shall promote the establishment, operation and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and, where circumstances so require, by way of mutual regional arrangements cooperate with neighbouring States for this purpose". The leading interpretation of this provision is that "the fact that the persons are engaged in an unlawful activity should not make any difference to the duty to rescue [and] the fact that the persons to be saved are migrants should not in any way hinder their right to be saved".[73]

49. The promotion of political and policy agendas aimed at reasserting "traditional values" to the detriment of the rights of women and some gender non-conforming persons is in contravention of international law. Article 5 (a) of the Convention on the Elimination of All Forms of Discrimination against Women requires States parties to implement appropriate measures to achieve the elimination of prejudices and customary and all other practices based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women. Article 7 obliges States parties to take all appropriate measures to eliminate discrimination against women in political and public life, including in the formulation and implementation of government policy.[74] In its general recommendation No. 32 (2014), the Committee on the Elimination of Discrimination against Women clarified that the Convention necessarily applies to sex- and gender-based discrimination that disproportionately affects certain women because of their race, ethnicity, religion or belief, caste or other status.

Racist and xenophobic expression

50. Under international human rights law, the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Civil and Political Rights impose strong limitations on the propagation of racist and xenophobic expression, and outlaw the advocacy of national, racial or religious prejudice that amounts to incitement to discrimination, hostility or violence. The Committee on the Elimination of Racial Discrimination, in its general recommendation No. 35 (2013), provided a useful explanation of how States parties should approach the regulation of racist speech under the Convention. The recommendation highlights a number of factors that should inform the practice of Member States. Significantly, the Committee recalls that racial equality and freedom of expression are symbiotic, and should not be pitted against each other in a competitive or zero-sum manner. Instead, "The rights to equality and freedom from discrimination, and the right to freedom of expression, should be fully reflected in law, and policy and practice as mutually supportive human rights."[75]

51. Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination requires State parties to "condemn all propaganda and all

[72] See A/HRC/37/34.

[73] Irini Papanicolopulu, "The duty to rescue at sea, in peacetime and in war: a general overview", in "War and security at sea", *International Review of the Red Cross*, vol. 98, No. 2 (August 2016), p. 495.

[74] Committee on the Elimination of Discrimination against Women, general recommendation No. 23 (1997) on women in political and public life, para. 7.

[75] Committee on the Elimination of Racial Discrimination, general recommendation No. 35 (2013) on combating racist hate speech, para. 45.

organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form". It also requires States parties to "undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination" and to make punishable by law "all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin". The Committee on the Elimination of Racial Discrimination has recommended concrete guidance for States parties on the adoption of legislation combating racist speech falling under article 4, and the Special Rapporteur encourages States to review general recommendation No. 35 in order to benefit from its concrete guidance.

52. Article 19 of the International Covenant on Civil and Political Rights protects freedom of opinion and expression, which may be restricted only in law and when such restrictions are necessary for respect of the rights or reputations of others and the protection of national security or of public order, or of public health or morals. Any restriction on freedom of speech must not only be a matter of necessity, but must be proportionately tailored to achieve the legitimate end that warrants the restriction.[76] Article 20 of the Covenant states specifically that States parties must legally prohibit "advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence". The Human Rights Committee and a number of human rights mechanisms have interpreted this provision as creating a high threshold because the limitation of speech must remain exceptional.

53. Freedom of expression is also enshrined in the International Convention on the Elimination of All Forms of Racial Discrimination. The Committee on the Elimination of Racial Discrimination has reiterated that freedom of expression is integrated into the Convention, and that the Convention contributes to a fuller understanding of the parameters of freedom of expression under international human rights law. For determining what racist expression should be punishable by law, the Committee stresses the importance of context, which includes: (a) the content and form of the speech; (b) the economic, social and political climate; (c) the speaker's status and position; (d) the reach of the speech; and (e) the objectives of the speech. As discussed above, nationalist populism can have a profound impact on the national context in ways relevant to the assessment of whether offensive expression has crossed the threshold of discrimination established under the Convention. Nationalist populism shapes the climate of national discourse and can convert public political platforms into vehicles for spreading prejudice and intolerance and even inciting discrimination and violence. For this reason, Member States, and even private actors, such as the technology companies that often directly interface with racist and xenophobic content online, must remain vigilant in their identification of racist expression in national climates in which certain groups are openly committed to spreading and enforcing intolerance. The Committee warns that racist speech may sometimes rely on indirect language to disguise its targets or objectives, and may rely on coded symbolic communication to achieve its ends. Even "incitement may be express or implied, through actions such as displays of racist symbols or distribution of materials as well as words".[77]

54. Member States must take urgent action to ensure that racist expression violating the standards set out in the International Convention on the Elimination of All Forms of Racial Discrimination are made punishable by law. In this regard, the Committee

[76] See CCPR/C/85/D/1022/2001.

[77] Committee on the Elimination of Racial Discrimination, general recommendation No. 35 (2013) on combating racist hate speech, para. 16

on the Elimination of Racial Discrimination has recommended that the criminalization of racist expression be reserved for serious cases, to be proven beyond reasonable doubt and governed by principles of legality, proportionality and necessity,[78] and that less serious cases should be dealt with using non-criminal sanctions. The Convention requires States parties to declare illegal and prohibit racist organizations that promote and incite racial discrimination. This means that States parties must take action to prohibit racist organizations meeting the conditions articulated in article 4 (b), including in contexts in which such organizations use nationalist populist fervour to attempt to mainstream their extreme ideologies or racial, ethnic or religious hatred and intolerance. Under the Convention, legislation combating racist expression alone is not sufficient. Article 6 makes clear that effective protection from and remedies for racial discrimination are just as important as formal provisions.

55. Unfortunately, sometimes Member States use concerns about racist or intolerant speech as a pretext for illegitimately quashing expression that is compliant with human rights. In this regard, the Committee on the Elimination of Racial Discrimination has observed with concern that "broad or vague restrictions on freedom of speech have been used to the detriment of groups protected by the Convention". The Special Rapporteur endorses the Committee's strong position that "measures to monitor and combat racist speech should not be used as a pretext to curtail expressions of protest at injustice, social discontent or opposition".[79] Overly broad defamation and slander laws that target minority religious groups, political opponents, academics, human rights defenders or others appropriately exercising their freedom of expression should not be tolerated. The Special Rapporteur also strongly condemns attempts by public and private actors to co-opt the language of equality and non-discrimination as a means of stifling legitimate expression. Similarly, the Special Rapporteur also condemns attempts by public and private actors to use the language of freedom of expression as a means of or cover for violating the rights of others to equality and non-discrimination.

56. The Committee on the Elimination of Racial Discrimination highlights that, although article 4 has operated as the principle vehicle for the prohibition of racist speech, the International Convention on the Elimination of All Forms of Racial Discrimination contains other provisions essential for fulfilling the objectives articulated in article 4. Article 4 expressly invokes article 5, which guarantees the right to equality before the law and the right to be free from racial discrimination in the enjoyment of rights, including freedom of expression. Article 6 requires effective remedies for violations of rights enshrined in the Convention, as indicated above, and article 7 underscores the importance of education in promoting equality and tolerance. Education that seeks to undercut the racist effects of nationalist populism should include accurate and representative accounts of national history that give voice to racial and ethnic diversity, and that expose the untruths of those who attempt to write minorities out of national histories and identities in order to sustain ethno-nationalist myths of racially or ethnically "pure" nations.

57. The Durban Declaration and Programme of Action condemns the persistence and resurgence of neo-Nazism, neo-Fascism and violent nationalist ideologies based on racial or national prejudice.[80] It also condemns political platforms and organizations based on doctrines of racial superiority and related discrimination, as well as legislation and practices based on racism, racial discrimination, xenophobia and related intolerance, highlighting that they are incompatible with democracy and

[78] Human Rights Committee, general comment No. 34 (2011) on the freedoms of opinion and expression, paras. 22–25 and 33–35.

[79] Committee on the Elimination of Racial Discrimination, general recommendation No. 35 (2013) on combating racist hate speech, para. 20.

[80] See A/CONF.189/12 and A/CONF.189/12/Corr.1, chap. I, para. 84.

transparent and accountable governance. Furthermore, it reaffirms, in its paragraph 94, that the stigmatization of people of different origins by acts or omissions of public authorities, institutions, the media, political parties or national or local organizations is not only an act of racial discrimination but can also incite the recurrence of such acts, thereby resulting in the creation of a vicious circle which reinforces racist attitudes and prejudices, which must also be condemned.

58. The OHCHR Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence also suggests a high threshold for restrictions on freedom of expression.[81] It outlines a six-part threshold test in keeping with the approach of the Committee on the Elimination of Racial Discrimination, taking into account the following factors: context; speaker; intent; content and form; extent of the speech act; and likelihood, including imminence. The consultative process under the Plan is aimed at enhancing understanding of the relationship between freedom of expression and incitement to hatred. OHCHR has expressed concerns regarding how Member States often refrain from punishing perpetrators of incidents in violation of article 20 of the International Covenant on Civil and Political Rights and, at the same time, oversee de facto persecution through the abuse of vague domestic legislation, jurisprudence and policies on speech.[82] In the annual report to which the Plan is annexed, the United Nations High Commissioner for Human Rights found that anti-incitement laws in countries worldwide were at times excessively narrow or vague. The Plan recommends that domestic legal frameworks on incitement to hatred expressly refer to article 20 (2) of the Covenant and include robust definitions[83] of key terms such as "hatred", "discrimination", "violence" and "hostility" as defined in the Camden Principles on Freedom of Expression and Equality.[84]

59. The Special Rapporteur would like to note that criminalizing racist expression on its own could never fully address or remedy the persistence and perniciousness of racist expression. Consider the example of Europe, which, as a region, has commendably taken the most action to create an anti-hate-crimes regulatory framework. However, a recent report by the European Commission on the transposition and implementation of Council Framework Decision 2008/913/JHA, providing criminal law protection against hate speech and hate crimes, notes that the domestic adoption of the provisions contained in the Decision is often incomplete and/or incorrect.[85] The report highlights that factors hindering the implementation of the Decision include practitioners' insufficient knowledge of the relevant legislation. The European Network against Racism also noted that existing mechanisms within the institutions of the European Union fail to effectively monitor and sanction hate speech. As a result, the Special Rapporteur urges Member States to focus on adopting the necessary frameworks and ensuring their proper enforcement.

[81] See A/HRC/22/17/Add.4. For details and documentation of the consultation process regarding the Rabat Plan of Action, see www.ohchr.org/EN/Issues/FreedomOpinion/Articles19-20/Pages/Index.aspx.

[82] See A/HRC/22/17/Add.4, para. 11.

[83] See A/67/357, paras. 44–46.

[84] Article 19, International Centre against Censorship, "Camden Principles on Freedom of Expression and Equality", 30 April 2009. Available at https://www.article19.org/resources/camden-principles-freedom-expression-equality/. See also, E/CN.4/1996/39, annex; and A/67/357, paras. 39–45.

[85] European Parliament, Policy Department C: Citizens' Rights and Constitutional Affairs, *The European Legal Framework on Hate Speech, Blasphemy and Its Interaction with Freedom of Expression* (Brussels, European Union, 2015).

III. Conclusions and recommendations

60. **The first recommendation of the Special Rapporteur is that Member States actively and explicitly recognize that nationalist populist mobilizations threaten racial equality. Too often, public officials are reluctant to acknowledge the prevalence of racism, discrimination and related intolerance, and this state of denial itself can prevent action to combat discrimination and intolerance. Condemnation of racist and xenophobic nationalist populism must be swift and unequivocal. Political parties and their leadership also have a role to play here, given their significant influence on the political climate, as do multilateral agencies and regional bodies. The bold stand against racism and xenophobia taken by the outgoing United Nations High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, is emblematic of the action required. Acknowledging the nationalist populist threat to racial equality also means rejecting national narratives that erase racial, ethnic and religious minorities from national history and identity. All United Nations Member States and United Nations senior officials, including the Secretary-General, should follow the lead of the High Commissioner in taking a bold stance against racism and xenophobic hatred, including when this hatred and intolerance is falsely cloaked in concerns for national prosperity.**

61. **Where nationalist populist threatens racial equality, Member States are obliged to take action to combat this threat, in order to comply with their equality and non-discrimination obligations under international human rights law. This means taking all measures necessary to combat direct and indirect forms of racial discrimination, at all levels of government: national, provincial and even local. Local authorities play an especially vital role in the enforcement of human rights. In this regard, the Special Rapporteur would like to acknowledge local government authorities such as Domenico Lucano,[86] Mayor of Riace, Italy, who welcomed refugees who have gone on to give new life to their host communities. She would also like to acknowledge the civil society organizations and private individuals around the world who are fighting back against exclusionary populist nationalism, and to acknowledge the Afrodescendent, indigenous and other minority human rights defenders who risk their lives daily to hold their Governments to account for racial inequality.**

62. **Those combating racial and xenophobic discrimination and exclusion should carefully account for intersectionality, and how gender, disability status, sexual orientation and other social categories shape the experience of discrimination. Member States should actively reject the reinforcement of patriarchy and heteronormativity through laws that, in the name of national or traditional values, undercut the autonomy of women, and gender and sexual minorities. They should also take seriously the fact that an intersectional approach to fighting discrimination means including women, persons with disabilities, gender and sexual minorities and others in decision-making at all levels of government.**

63. **With respect to expression in particular, Member States should implement the concrete recommendations that other United Nations bodies, especially the Committee on the Elimination of Racial Discrimination, have made that pertain to combating racist and xenophobic expression. General recommendation No. 35 is vital in this regard, and, owing to space constraints, its practical guidance is not recapitulated here, but instead incorporated by reference. In keeping with the Committee's guidance, the Special Rapporteur urges States parties to**

[86] See Thomas Bruckner, "Refugees revive fading Italian villages", *Al-Jazeera*, 2 May 2016.

withdraw their reservations to article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination and article 20 of the International Covenant on Civil and Political Rights. She also reiterates that "as a minimum requirement, and without prejudice to further measures, comprehensive legislation against racial discrimination, including civil and administrative law as well as criminal law, is indispensable to combating racist hate speech effectively" (see CERD/C/GC/35, para. 9). The Special Rapporteur reiterates her strong condemnation of attempts by public and private actors to co-opt the language of equality and non-discrimination as a means of stifling legitimate expression, and attempts to use the language of freedom of expression as a means of or cover for violating the rights of others to equality and non-discrimination.

64. **Legal sanctions are only one part of a comprehensive strategy. Member States, civil society and even private individuals should also take positive measures to counter climates of intolerance. An example of the available resources on using positive measures to combat racist expression can be found in a 2018 report by Article 19, International Centre against Censorship.[87] Another example is the action taken by the European Union high-level group on combating racism, xenophobia and other forms of intolerance to adopt a code of conduct with Facebook, Microsoft, Twitter and YouTube on illegal online hate speech in May 2016.[88] In 2018, Google+, Instagram and Dailymotion announced their participation in the code of conduct.[89]**

65. **The media also have an important role to play in tackling racist and xenophobic expression, and should observe codes of conduct that embody a substantive commitment to racial equality, which, as discussed above, is symbiotic with legitimate freedom of expression. The Special Rapporteur commends initiatives such as the Ethical Journalism Network, an alliance of reporters, editors and publishers aimed at promoting ethical journalism around five core principles: truth and accuracy, independence, fairness and impartiality, humanity and accountability. It proposes training, education and research to promote fact-based communications to help people truly understand the world around them.[90] Similarly, she welcomes the development of initiatives such as Media against Hate, a Europe-wide campaign initiated by civil society organizations and the European Federation of Journalists.[91]**

[87] Article 19, International Centre against Censorship, "Responding to 'hate speech': comparative overview of six EU countries", 2 March 2018.

[88] See http://ec.europa.eu/justice/fundamental-rights/files/hate_speech_code_of_conduct_en.pdf.

[89] European Commission, "Countering illegal hate speech online #NoPlace4Hate", 11 July 2018.

[90] Ethical Journalism Network, "The 5 principles of ethical journalism", available at https://ethicaljournalismnetwork.org/who-we-are/5-principles-of-journalism.

[91] Article 19, International Centre against Censorship, "Self-regulation and 'hate speech' on social media platforms", 2 March 2018.

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Combating sand and dust storms

Combating sand and dust storms

Report of the Secretary-General

Summary

The present report, submitted pursuant to General Assembly resolution 72/225 on combating sand and dust storms, provides details on developments within the United Nations system since the first Assembly resolution on this topic (resolution 70/195) and covers the period from 2016 to mid-2018. The report highlights activities and initiatives undertaken by United Nations entities, Member States and a range of stakeholders and underscores achievements, including cross-cutting activities, made during the reporting period in the following three principal areas: monitoring, prediction and early warning; impact mitigation, vulnerability and resilience; and source mitigation.

* A/73/150.

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I. Introduction

1. In its resolution 72/225 on combating sand and dust storms, the General Assembly requested the Secretary-General to report to the Assembly at its seventy-third session on the implementation of the resolution and invited all relevant bodies, agencies, funds and programmes of the United Nations system and all other related organizations to integrate, in their respective cooperation frameworks, operational programmes, measures and actions aimed at combating sand and dust storms so as to address this problem and contribute to the enhancement of, inter alia, capacity-building at the national level, the implementation of regional and subregional projects, the sharing of information, best practices and experiences and the boosting of technical cooperation in the affected countries and countries of origin, to improve the implementation of sustainable land management practices, to take measures to prevent and control the main factors of sand and dust storms and to improve the development of early warning systems as tools to combat sand and dust storms in accordance with their strategic plans. The present report provides details on developments since the first Assembly resolution on combating sand and dust storms (resolution 70/195), covering the period from 2016 to mid-2018.

2. Sand and dust storms present a formidable challenge to achieving sustainable development in its three dimensions — economic, social and environmental. Accordingly, addressing the hazards associated with sand and dust storms will contribute to the achievement of the Sustainable Development Goals and targets adopted as part of the 2030 Agenda for Sustainable Development (see General Assembly resolution 70/1). Ensuring that global efforts to achieve sustainable development are not undermined by the multidimensional impacts of sand and dust storms requires an understanding of disaster risk for prevention and mitigation and for the development and implementation of appropriate preparedness and effective response to disasters, as outlined in the Sendai Framework for Disaster Risk Reduction 2015–2030 endorsed in Assembly resolution 69/283.

3. The global nature of the issues associated with sand and dust storms is reflected in the fact that a total of 151 countries (77 per cent of all parties to the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa) are affected directly by sand and dust storms and that 45 countries (23 per cent of all parties to the Convention) are classified as sand and dust storm source areas. Most of the countries classified as source areas (38 out of 45) are in Africa and Asia.[1]

4. In providing information and updates on global efforts to combat sand and dust storms, in alignment with the Sustainable Development Goals,[2] the present report draws on contributions from the United Nations Environment Programme (UNEP), the World Meteorological Organization (WMO), the secretariat of the United Nations Convention to Combat Desertification, the Food and Agriculture Organization of the United Nations (FAO), the Economic and Social Commission for Asia and the Pacific (ESCAP), the United Nations Office for Disaster Risk Reduction and the World Health Organization (WHO).

[1] Nick Middleton and Utchang Kang, "Sand and dust storms: impact mitigation", *Sustainability*, vol. 9(6) (17 June 2017).

[2] Enric Terradellas, "Addressing sand and dust storms in SDG implementation", International Institute for Sustainable Development, SDG Knowledge Hub, 22 August 2017.

II. Developments since the adoption of General Assembly resolution 70/195

A. Cross-cutting developments

5. Various United Nations intergovernmental decisions have highlighted the importance of the sand and dust storms problem and called for assistance from the United Nations system. These include General Assembly resolutions 70/195, 71/219 and 72/225, United Nations Environment Assembly resolution 2/21 and ESCAP resolution 72/7. The International Conference on Combating Sand and Dust Storms, held in Tehran from 3 to 5 July 2017, the convening of which was noted in Assembly resolution 72/225, also deliberated the importance of addressing sand and dust storms, as reflected in the ministerial declaration and set of technical recommendations resulting from the conference. The conference was hosted by the Government of the Islamic Republic of Iran with the cooperation of UNEP, the United Nations Development Programme (UNDP) and the Department of Economic and Social Affairs, as well as other relevant United Nations entities.

6. During the thirteenth session of the Conference of the Parties to the United Nations Convention to Combat Desertification, held in Ordos, China, from 6 to 16 September 2017, the Conference adopted decision 31/COP.13, entitled "Policy Advocacy Framework[1] to combat sand and dust storms", in which it invited Parties to use the Policy Advocacy Framework. The Framework, developed in collaboration with UNEP and WMO, highlights three interrelated principal areas of action in policy development and implementation for sand and dust storms at all scales, as well as cross-cutting and integrated actions, and suggests principles for developing and implementing more proactive sand and dust storm policies, in particular resilience building and source mitigation.

7. In decision 31/COP.13, Parties to the Convention are also invited to mainstream sand and dust storm issues in national disaster risk reduction policies, explore options to integrate anthropogenic source mitigation measures into national voluntary land degradation neutrality target-setting, promote cooperation on sand and dust storms and facilitate information exchange and knowledge sharing and transfers, as appropriate, in the affected areas.

8. The Conference adopted two other decisions at its thirteenth session that include provisions for sand and dust storms. In decision 8/COP.13, the Conference requested the secretariat of the Convention to continue fostering partnerships to facilitate capacity development for risk and vulnerability assessments and mitigation of the impacts of sand and dust storms. In decision 9/COP.13, it requested the secretariat to build on and strengthen collaboration with relevant United Nations entities and the secretariats of the Rio Conventions, as well as development partners and relevant international organizations, to support activities to address sand and dust storms.

9. The Ordos Declaration urges a proactive approach to enhance cooperation and coordination at the global, regional and subregional levels to address the causes and impacts of sand and dust storms, including through the promotion of sustainable water use and land management, to reduce future risks and impacts.

10. The *Global Assessment of Sand and Dust Storms*, conducted by UNEP in partnership with WMO and the secretariat of the United Nations Convention to Combat Desertification, was transmitted by the Secretary-General to the General Assembly at its seventy-first session in September 2016 (A/71/376). The assessment provides a comprehensive overview of the global distribution of sand and dust storms

[1] See ICCD/COP(13)/19 and ICCD/COP(13)/19/Corr.1.

and their drivers, sources and impacts and sets out proposals for consolidated and coordinated technical and policy options for responding to sand and dust storms. These recommendations include an integrated policy framework to guide further action to mitigate sand and dust storms, which comprises the following:

(a) Measures to reduce anthropogenic emissions:

(i) Sustainable land and landscape management;

(ii) Climate change mitigation and adaptation;

(b) Physical protection of valuable assets, such as towns, infrastructure and irrigation schemes:

(i) Reducing wind speed through the planting of trees around urban areas and infrastructure to deposit sand and trap dust outside these areas;

(ii) Aerodynamic methods to prevent sand and dust accumulation, such as alignment of roads, removal of obstacles to wind and land shaping;

(c) Monitoring, prediction and warning systems for sand and dust storms:

(i) Monitoring of sand and dust storms through ground networks of meteorological and air-quality monitoring stations, combined with the use of satellite data;

(ii) Sand and dust storm forecasting and early warning systems, including mapping of trends and future scenarios of anthropogenic dust sources;

(d) Preparedness and emergency response procedures:

(i) Preparedness and emergency procedures for coping with sand and dust storm events (for example, for airport, rail and road closures; hospital emergency services; and advisory communications to public service institutions);

(ii) Public awareness of sand and dust storm risks (through education, media and social networks and telecommunication) and emergency procedures;

(iii) Mainstreaming sand and dust storms into disaster risk reduction and emergency response measures;

(e) Policies, legal frameworks and action plans to support the above actions:

(i) International environmental laws (for example, the Rio Conventions[4] and Sustainable Development Goal target 15.3 on land degradation neutrality) and initiatives (for example, the WMO Sand and Dust Storm Warning Advisory and Assessment System);

(ii) Regional frameworks, agreements and action plans;

(iii) National action plans;

(f) Research to reduce critical uncertainties:

(i) Improved knowledge on the interaction of dust with biogeochemical global systems and climate systems;

(ii) Improved methods for monitoring, prediction and early warning systems;

(iii) Assessing the impacts and costs of sand and dust storms at local to global scales.

[4] Convention on Biological Diversity, United Nations Convention to Combat Desertification and the United Nations Framework Convention on Climate Change.

11. Another key report covering sand and dust storms in Asia and the Pacific,[5] launched at the seventy-fourth session of ESCAP in May 2018, provides perspectives on ways to enhance the science-based understanding of sand and dust storms for policymakers and thus support the development of adaptation and mitigation policies by policymakers at the regional and national levels. The report presents an analysis of sand and dust storm events using Earth-observation satellite images and of potential drivers based on future climate scenarios. It also points to the risk hotspots and areas where there are gaps in information, cooperation and policy capacity. The report also highlights the shared vulnerability across wide areas of the Asia-Pacific region due to the nature of such storms. Combating this borderless phenomenon requires information sharing, dialogue and cooperation among the affected countries to arrive at risk-informed and climate-sensitive policy interventions.

12. The approach used by ESCAP to address sand and dust storms is based on a multi-hazard risk assessment and alert system for slow-onset disasters that covers drought, desertification and land degradation. Recognizing the transboundary nature of dust storms, ESCAP is facilitating multi-country coordinated policy actions. Such policies are already making positive impacts in China and Mongolia. In China, for example, an ecological restoration programme from 2001 to 2013 reduced the risk of sand and dust storms by up to 15 per cent in the North China Plain.

13. Through the regional cooperation mechanism for combating sand and dust storms adopted by ESCAP, which is aligned with the Sendai Framework for Disaster Risk Reduction, scientific assessments of the risk are conducted on a regular basis, risk governance is facilitated through a regional platform for stakeholders, investment in resilience is encouraged through the promotion of adaptation and mitigation measures and preparedness for response is strengthened through a better understanding of impacts. With a primary focus on the under-served subregions of ESCAP, including South-West and Central Asia, the ESCAP approach is to facilitate such cooperation around three main components:

(a) **Multi-hazard risk assessment**. A multi-hazard risk assessment and modelling approach will be used to identify the drivers of sand and dust storms, such as land degradation, poor water management, drought, desertification and climate change and their interactions. This approach will be piloted in South, South-West and Central Asia;

(b) **Alert system**. Given the strong correlation between drought, desertification and sand and dust storms, the tools and techniques being developed under the ESCAP Regional Cooperative Mechanism for Drought Monitoring and Early Warning and the WMO Sand and Dust Storm Warning Advisory and Assessment System will be used to develop an alert system for the semi-arid subregions of South, South-West and Central Asia;

(c) **Partnerships/network**. Stakeholders involved in combating sand and dust storms will be brought together to form an Asia-Pacific sand and dust storm network; the network will support analytical work, such as periodic risk assessments, provide feedback on the alert system and develop joint action plans involving both source and impacted countries.

14. The long-standing ESCAP programme to strengthen regional cooperation for disaster risk reduction and resilience provides a foundation for facilitating action around the three components outlined above in order to observe, predict, adapt and mitigate the risk of sand and dust storms. Technical articles on sand and dust storms

[5] ESCAP and the Asian and Pacific Centre for the Development of Disaster Information Management, *Sand and Dust Storms in Asia and the Pacific: Opportunities for Regional Cooperation and Action* (Bangkok, 2018).

were prepared by UNEP for various audiences to bring broader public attention to the issue of sand and dust storms and to communicate the importance of the problem, its causes and impacts and mitigation options, including a report entitled *Frontiers 2017: Emerging Issues of Environmental Concern* and the third edition of the *World Atlas of Desertification*. Sand and dust storms have also been included in the approved report outline for the special report on climate change, desertification, land degradation, sustainable land management, food security and greenhouse gas fluxes in terrestrial ecosystems of the Intergovernmental Panel on Climate Change, scheduled for publication in 2019.

15. Several other recent international meetings have included a significant focus on sand and dust storms. On 15 November 2016, UNDP and UNEP sponsored a side event on sand and dust storms at the twenty-second session of the Conference of the Parties to the United Nations Framework Convention on Climate Change, held in Marrakech, Morocco. ESCAP coordinated a high-level expert consultation on regional cooperation for combating sand and dust storms in Asia and the Pacific on 30 and 31 January 2018 in Tehran, and a side event on the challenge of sand and dust storms in the Near East and North Africa region was held on 8 May 2018 during the thirty-fourth FAO Regional Conference for the Near East at FAO headquarters in Rome.

16. Participants at the 2018 Asian Ministerial Conference on Disaster Risk Reduction, held from 3 to 6 July in Ulaanbaatar and coordinated by the United Nations Office for Disaster Risk Reduction, recognized the challenges posed by sand and dust storms as a key transboundary hazard in Asia, particularly in arid and semi-arid regions. At the conference, ESCAP, in partnership with the Governments of the Islamic Republic of Iran and Mongolia, organized an event which analysed the sand and dust events in 2018 and identified key lessons. One of the key lessons is the importance of regional multi-hazard alert mechanisms and early warning systems for slow-onset disasters. Only deeper partnerships between countries can mitigate risks across borders and enable vulnerable regions to adapt. For example, in May 2018, a powerful dust storm swept over the eastern part of the Islamic Republic of Iran, south-western Afghanistan and north-western Pakistan. At the same time, a toxic salt storm from the Aralkum Desert hit northern Turkmenistan and western parts of Uzbekistan. Sand and dust storms ensued, engulfing the densely populated parts of western and northern India, colliding with pre-monsoon winds and worsening severe air pollution. Despite individual efforts from countries to address the situation, it is estimated that millions of people were affected and over a thousand killed. In this regard, the 2018–2020 action plan of the Asia Regional Plan for Implementation of the Sendai Framework for Disaster Risk Reduction 2015–2030 calls for assessing the full spectrum of disaster risk through the establishment of appropriate baseline information and comprehensive risk profiles, including the capture of data on the increasing magnitude of certain hazards, such as sand and dust storms, and the impact of such events in different dimensions.

17. Pursuant to General Assembly resolution 72/225, a high-level interactive dialogue on sand and dust storms was held at Headquarters in New York on 16 July 2018, bringing together Member States, United Nations entities, regional commissions and other stakeholders to discuss challenges related to sand and dust storms and ways to deal with them. The aim was to discuss action-oriented recommendations to address the challenges faced by the affected countries, including ways to improve policy coordination at the global level to tackle those challenges in the context of the Sustainable Development Goals. During the dialogue, the continuing need to confront the challenges presented by sand and dust storms was highlighted because of the associated economic, social and environmental costs, and

the need for a sense of collective responsibility; in particular, the need for greater cooperation was emphasized by many participants.

18. In paragraph 4 of resolution 72/225, the General Assembly invited the Executive Director of UNEP to consider initiating an inter-agency process involving relevant entities of the United Nations system, within their respective mandates and existing resources, and taking into account United Nations Environment Assembly resolution 2/21 and other relevant resolutions and decisions, to prepare a global response to sand and dust storms, including a situation analysis, a strategy and an action plan, which could result in the development of a United Nations system-wide approach to addressing sand and dust storms and could be used as an inter-agency framework for medium- or long-term cooperation and division of labour. UNEP has suggested that an inter-agency network could be established with the aim of enhancing cooperation and coordination on the sand and dust storms agenda. This would ensure a more coherent and consistent approach to tackling sand and dust storm issues at the global, regional and national levels.

B. Monitoring, prediction and early warning

19. WMO has documented considerable experience with sand and dust storm monitoring and prediction following the Fifteenth World Meteorological Congress, in 2007, which endorsed the launching of the WMO Sand and Dust Storm Warning Advisory and Assessment System.[6] More than 20 organizations currently provide daily global or regional dust forecasts in different geographical regions, thereby contributing to the data recorded in the System and thus enhancing the ability of countries to deliver timely, quality sand and dust storm forecasts, observations, information and knowledge to users through an international partnership of research and operational communities.

20. The WMO System, which is a global federation of partners organized around regional nodes, integrates research and user communities from various sectors, such as health, climate, energy, transport, aeronautics and agriculture. Currently there are three regional nodes: the Northern Africa-Middle East-Europe node (with its centre hosted in Spain),[7] the Asia node (with its centre hosted in China)[8] and the pan-America node (hosted in Barbados, with support from the United States of America).[9] There is a possibility of establishing a fourth regional node for Western Asia.

21. The main objective of the regional centres of the WMO Sand and Dust Storm Warning Advisory and Assessment System is to facilitate user access, particularly for national meteorological and hydrological services, to observational, assessment and forecast products, as well as to contribute to the enhancement of capacity-building. In May 2017, WMO approved a second operational centre, for Asia, hosted in China, following the establishment in February 2014 of the Barcelona Dust Forecast Center, which generates and distributes forecasts for North Africa, the Middle East and Europe. The Center also organizes training events on sand and dust storms, most recently in Istanbul, Turkey (October 2017), Cairo (February 2018) and San Cristobal de La Laguna, Spain (May 2018). It is also developing a sand and dust storm early warning system for Burkina Faso.

22. Stronger cooperation between FAO and WMO would enable the utilization of potential agricultural applications of the WMO Sand and Dust Storm Warning

[6] See www.wmo.int/sdswas.

[7] See http://sds-was.aemet.es.

[8] See http://eng.nmc.cn/sds_was.asian_rc.

[9] See http://sds-was.cimh.edu.bb/.

Advisory and Assessment System, and FAO has various assessment tools and mechanisms in place that could contribute to existing monitoring, prediction and early warning systems for sand and dust storms. A methodology for mapping land degradation and sustainable land management[10] was developed as part of the Land Degradation Assessment in Drylands project, in partnership with the World Overview of Conservation Approaches and Technologies. The methodology has been tested in China in areas where wind erosion and sand and dust storms are major types of land degradation. The new FAO indicator "C2" (based on a new assessment methodology of FAO), on direct agricultural loss attributed to disasters, is an effort led at the global level by FAO in close collaboration with the United Nations Office for Disaster Risk Reduction. The indicator is currently being integrated into the practices of national statistical offices and is the subject of various memorandums of agreement as part of the efforts to fulfil the objectives of the Sendai Framework for Disaster Risk Reduction and Sustainable Development Goal target 1.5.2; this process can be fine-tuned and used in other countries to collect data and monitor the impacts on agriculture of large-scale sand and dust storm events.

C. Impact mitigation, vulnerability and resilience

23. The secretariat of the United Nations Convention to Combat Desertification has been developing and testing, in collaboration with UNEP and WMO, methodology frameworks for economic impact assessment, risk assessment, vulnerability mapping, early warning and anthropogenic source mitigation, to be used by countries in the development and implementation of policies concerning sand and dust storms. The methodology for assessing economic impact has been tested in Kuwait, and the methodology for mapping vulnerability has been tested in China.

24. FAO recognizes that sand and dust storms jeopardize livelihood systems in affected areas and that they may lead to escalated movements of rural people from their home areas. However, a better understanding of the effects of sand and dust storms on agriculture and rural livelihoods is needed to inform the development of appropriate mitigation actions. A number of the organization's initiatives already have relevance for vulnerability and resilience, including the promotion of climate-smart agriculture in many countries to enhance the resilience of farmers and reduce their vulnerability to climate change, and the FAO resilience programmes, including the Regional Initiative on Building Resilience for Food Security and Nutrition for the Near East and North Africa region, which supports resilience building in a number of countries affected by sand and dust storms. With the Resilience Index Measurement and Analysis, FAO has a tool that can be adapted and used in the context of sand and dust storms to establish baselines of vulnerability and resilience of agricultural populations affected by sand and dust storms, particularly in protracted crisis situations in which sand and dust storm impacts may overlap with other threats.

25. FAO also supports the implementation and promotion of agroecological approaches for adaptation to climate change in the fields of sustainable agricultural development, food security and nutrition.[11] Following the first International Symposium on Agroecology for Food Security and Nutrition, held in 2014, FAO facilitated a global dialogue that involved approximately 1,350 multi-stakeholder participants from 162 member States taking part in a series of regional meetings in 2015 and 2016. At the thirty-fourth FAO Regional Conference for the Near East, mainstreaming agroecology was adopted in the three regional initiatives for the Near

[10] See www.fao.org/land-water/land/land-assessment/assessment-and-monitoring-impacts/en/.

[11] See http://www.fao.org/partnerships/civil-society/events/details-events/en/c/1073831/.

East on: water scarcity, small-scale family farming and building resilience for food security and nutrition.

26. Atmospheric dust has a number of serious health implications, and sand and dust storm issues will constitute an important component of a global coalition on health, environment and climate change launched in May 2018 by WHO, UNEP and WMO. The new coalition aims to improve coordination and reduce the annual 12.6 million deaths attributed to environmental risks, especially air pollution.

27. WHO regularly convenes the Global Platform on Air Quality and Health — with approximately 100 participants from international agencies, scientific research institutes and national institutions — under which a working group on sand and dust storms has been formed to discuss emerging issues and share information. As part of the current update to the WHO air quality guidelines, a report on the health effects of sand and dust storms is being finalized. WHO, in collaboration with experts from WMO, is developing standard operating procedures to assess and address the short-term health effects of desert dust. In addition, as part of its Sustainable Development Goal monitoring activities, WHO is involved, together with WMO, in assessing the dust share of fine particulate matter ($PM_{2.5}$).

28. The Asian and Pacific Centre for the Development of Disaster Information Management, based in Tehran, is a major regional initiative of ESCAP to provide support to countries in increasing their resilience through targeted capacity development for disaster information management and knowledge sharing. In partnership with UNEP, WMO and the secretariat of the United Nations Convention to Combat Desertification, the Centre aims to support partnerships and a regional network to strengthen analytical work, including periodic risk assessments, and to provide feedback on the above-mentioned alert system for the semi-arid subregions of South, South-West and Central Asia. In the course of its work, the Centre could develop joint action plans involving source and affected countries.

D. Source mitigation

29. Several United Nations bodies have been involved in recent work to mitigate sand and dust storm issues at the source. In June 2017, UNEP partnered with the Elion foundation in China to establish the Belt and Road Desert Green Economy Innovation Centre in the Kubuqi Desert to promote practical cooperation in desertification control and green development, building on Elion's 30 years of experience in restoring degraded land to support economic growth in this area, which was once a significant source of dust storms that affected northern parts of China, including Beijing. A key focus of the Innovation Centre is the establishment of an international platform on green desert economics that focuses on innovation and technology exchange. The aim is to combine sand control and ecological restoration with the development of new energy sources, ecological agriculture, ecotourism, natural health products and green financing to motivate private enterprises and make use of the desert as a natural resource to reduce poverty and conflicts and make private sector investment more efficient and sustainable. An interregional project involving China, Mongolia, and countries in Central Asia and West Asia is being launched. The new project will also build on ongoing efforts such as the Central Asian Initiative for Land Management and the support provided to countries under the United Nations Convention to Combat Desertification to achieve land degradation neutrality. The International Ecosystem Management Partnership, a UNEP partnership institute, carried out work in 2014 and 2015 to map sand and dust storm source areas in West Asia using multiple environmental datasets as part of a project that included the use of shared Chinese experience in mitigating sand and dust storms.

30. FAO initiatives are also relevant in some regions, such as the Near East and North Africa — one of the driest regions in the world — where poorly managed agricultural areas can become sources of sand and dust storms while simultaneously suffering from the effects of wind erosion. It is important to note that in the agricultural sector, source and impact mitigation measures cannot be easily separated and most measures discussed below also have considerable impact mitigation benefits.

31. Agriculture and land use planning and management can play a key role in proactively addressing and linking both the causes and effects of sand and dust storms. For this reason, FAO supports the efforts of countries in stabilizing sand dunes and further contributes to sand and dust storm source mitigation by promoting agroforestry, shelter belts and afforestation and reforestation programmes. The Forest and Landscape Restoration Mechanism, piloted by FAO in a number of countries, contributes to the scaling-up, monitoring and reporting of forest and landscape restoration efforts to improve the resilience, productivity and socioeconomic value of restored forest and landscapes. Also relevant is the Sustainable Forest Management Toolbox, developed by FAO as a comprehensive technical package of knowledge tools, best practices and examples of their application to facilitate the implementation of sustainable forest management in a variety of contexts. A number of FAO initiatives, such as the Global Framework on Water Scarcity in Agriculture[12] and the Global Soil Partnership,[13] support efforts to combat sand and dust storms by raising awareness and strengthening regional and interregional cooperation in the management of soil and water resources, the management of watersheds, the sustainable use of land and the management of drought and soil erosion.

32. The Great Green Wall for the Sahara and the Sahel Initiative, launched in 2007 by 11 Sahelo-Saharan countries[14] under the leadership of the Pan-African Agency of the Great Green Wall and the African Union, should contribute to the mitigation of sources of sand and dust storms in that part of Africa. The project, which is supported by several international organizations, including the World Bank Group, FAO, the Global Environment Facility and the secretariat of the United Nations Convention to Combat Desertification, promotes the rehabilitation of degraded lands along an 8,000-km stretch of the Sahel from the Atlantic coast of Senegal to the coast of Djibouti. Other collaborative projects that could contribute to the mitigation of sand and dust storm sources include the Greening Drylands Partnership, a trilateral collaboration between the United Nations Convention to Combat Desertification, UNEP and the Republic of Korea under the Changwon initiative, and the Northeast Asia Desertification, Land Degradation and Drought Network, a subregional implementing entity of the United Nations Convention to Combat Desertification in North-East Asia.

33. A lack of basic data and understanding of some aspects of the sand and dust storm issue is still apparent, as highlighted in the *Global Assessment of Sand and Dust Storms* (see para. 10). In response to this problem, the secretariat of the United Nations Convention to Combat Desertification has been developing, in collaboration with other entities of the United Nations system, including UNEP and WMO, a global base map of sand and dust storm sources to provide baseline information for establishing and implementing national voluntary targets related to sand and dust storms in the context of land degradation neutrality. The Global Mechanism and the secretariat of the Convention have implemented the Land Degradation Neutrality Target Setting Programme to assist countries in establishing voluntary land

[12] See www.fao.org/land-water/overview/wasag/en/.

[13] See www.fao.org/global-soil-partnership/en/.

[14] Burkina Faso, Chad, Djibouti, Eritrea, Ethiopia, Mali, Mauritania, Niger, Nigeria, Senegal and Sudan.

degradation neutrality targets in affected areas. Some countries identified indicators related to sand and dust storms and adopted measures, including sand dune fixation techniques, to achieve their targets.

III. Conclusions

34. There is a growing appreciation of sand and dust storm issues as the topic gains wider recognition as a result of to the economic, social and environmental costs involved. This is important because sand and dust storms present a serious challenge to the achievement of the Sustainable Development Goals and associated targets. Gaps remain in the understanding of sand and dust storm processes and impacts, as well as in the context of climate change, but a number of the critical uncertainties are being addressed in ongoing and new initiatives from a number of entities of the United Nations system and other stakeholders. Nevertheless, a comprehensive approach is still needed to identify the sources and dynamics of sand and dust storms globally and regionally and to develop scenarios based on alternative land uses and the scaling-up of sustainable land management practices and mitigation measures. Such a comprehensive approach should also aim to establish regional strategies and agreements to combat sand and dust storms and reduce the impact on livelihoods, food security and the health of people living in vulnerable areas.

35. As the topic has gained more attention, existing links between the relevant entities of the United Nations system working together on sand and dust storm issues are being strengthened; the different entities have different responsibilities pertaining to sand and dust storm issues that can complement each other if initiatives are well coordinated and agreed upon. Harmonization and coordination of these efforts can become the focus of the inter-agency network on sand and dust storms proposed by UNEP in response to paragraph 4 of General Assembly resolution 72/225. The establishment of such an inter-agency network would inject further energy into the gathering momentum behind sand and dust storm issues, and the efficient operation of the network would be an essential precursor to realizing the most effective ways of combating sand and dust storms as part of efforts made towards the achievement of the 2030 Agenda for Sustainable Development. The transboundary and multidisciplinary nature of many sand and dust storm issues represents a strong stimulus towards coordinated action by the United Nations system. The fact that sand and dust storms represent a key transboundary hazard in numerous parts of the world also enhances the need to strengthen subregional, regional and interregional cooperation. Governments and other stakeholders are encouraged to fortify existing links, forge new links and promote greater policy coherence and synergies among their policies and programmes to tackle sand and dust storm issues.